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26.
CIVIL CODE

OF THE

STATE OF LOUISIANA:

WITH THE

STATUTORY AMENDMENTS, FROM 1825 TO 1853,
INCLUSIVE;

AND

REFERENCES TO THE DECISIONS OF THE SUPREME COURT OF
LOUISIANA TO THE SIXTH VOLUME OF ANNUAL REPORTS.

COMPILED AND EDITED BY

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NEW ORLEANS:

BLOOMFIELD & STEEL.

M.DCCCLXI.

ENTERED, according to Act of Congress, in the year 1854, by

J. B. STEEL,

at the Clerk's Office of the District Court of the United States, for the Eastern District
of Louisiana.

JOHN F. TROW,
Printer, Stereotyper, and Electrotyper,
46, 48 & 50 Greene Street,
Between Grand & Broome, New York.

ADVERTISEMENT.

THIS Edition of the Civil Code of Louisiana is a reprint of the Edition of 1825, published by authority of the State. The Editor has not felt at liberty to make any alterations in the text, except to correct manifest errors. Numerous discrepancies between the French and English texts have been *noted*;—many others will doubtless be detected by the critical reader. The Statutes passed during the session of 1853 not having been published in pamphlet form at the time the work was prepared for the press, they are referred to by number and date. It was the intention of the Editor to have noted the decisions of the Supreme Court up to the close of the year 1852, but at this date none have been published later than the Sixth Annual.

BATON ROUGE, LOUISIANA, *June*, 1853.

ABBREVIATIONS.

C. P.—Code of Practice.

M.—Martin's Reports, Old Series, 12 vols.

N. S.—Martin's Reports, New Series, 8 vols.

L.—Louisiana Reports, 19 vols.

R.—Robinson's Reports, 12 vols.

A.—Louisiana Annual Reports, 6 vols.



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CIVIL CODE

OF THE

STATE OF LOUISIANA.

PRELIMINARY TITLE.

OF THE GENERAL DEFINITIONS OF RIGHTS AND THE
PROMULGATION OF THE LAWS.

CHAPTER I.

OF LAW.

ARTICLE 1.—Law is a solemn expression of Legislative will.

12 L. 315; 8 N. S. 680.

ART. 2.—It orders, and permits, and forbids; it announces rewards and punishes; its provisions generally relate not to solitary or singular cases, but to what passes in the ordinary course of affairs.

ART. 3.—Customs result from a long series of actions constantly repeated, which have by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent.

4 L. 211, 160; 7 L. 211, 524; 11 L. 357; 13 L. 516; 18 L. 380; 4 R. 381; 1 N. S. 192.

CHAPTER II.

OF THE PUBLICATION OF THE LAWS.

ART. 4.—As laws cannot be obligatory without being known, they must be promulgated by the Governor of the State.

The laws shall be directed to the authorities intrusted with their execution or application, and to such other persons as the law has desig-

nated or may designate, in the form and manner which is, or may be prescribed, to ensure their most extensive publicity.

The Clerks of all the Courts of Justice of this State, shall insert in a register, to be kept for that purpose, the titles of all the laws which shall have been directed to them, together with the day on which they shall have received them.

5 N. S. 432; 12 L. 315; 3 L. 435. See 2 N. S. 435.

ART. 5.—The laws shall be executed through every part of this State, from the moment they shall be promulgated, in the manner prescribed.

12 L. 315.

ART. 6.—The promulgation made by the Governor, shall be presumed to be known in the parish which is the seat of government, three days after the day of promulgation, and in each of the other parishes, after the expiration of the said period, with the addition of one day for every four leagues between the place in which the promulgation shall have been made, and the place where the Court for such parish is held.

Stat. 24th March, 1827, p. 172.—§ 1. From and after the passage of this act, all the laws enacted by the Legislature of this State shall be considered promulgated at the place where the seat of government is located, the day after the publication of such laws in the gazette authorized to publish the laws of this State, and in all other parts of this State, thirty days after the publication in said gazette.

§ 2. The duties now imposed on the Clerks of the Courts of this State, to insert in a register, to be kept for that purpose, the titles of all the laws which shall have been directed to them, together with the day on which they shall have received them, shall not be considered as necessary to the promulgation in such laws.

§ 3. The Secretary of State shall be bound to keep a register, in which he shall write down the title of all the laws passed by the Legislature, together with the date of the day when they shall have been respectively published in the State paper, and that said register thus kept, or the certificates delivered from the same by the Secretary of State, under his official signature and seal of the State, shall be full evidence, both before the courts and elsewhere, of the publication of said laws; *Provided, however,* that whenever the promulgation of any law is contested, the person contesting the same shall be held to prove the fact.

12 L. 315.

ART. 7.—After the promulgation, no one can allege ignorance of the law.

CHAPTER III.

OF THE EFFECTS OF LAWS.

ART. 8.—A law can prescribe only for the future: it can have no retrospective operation, nor can it impair the obligation of contracts.

Const. 1852, art. 105.—No *ex post facto* law, nor any law impairing the obligation of contracts, shall be passed; nor vested rights be divested, unless for purposes of public utility, and for adequate compensation previously made.

See Art. 1940; 3 N. S. 175; 1 L. 343; 12 L. 355, 532; 16 L. 442; 2 A. 150; 6 A. 606.

ART. 9.—The law is obligatory upon all inhabitants of the State indiscriminately: the foreigner, whilst residing there, and his property within its limits, are subject to it.

12 L. 355, 552; 16 L. 442; 1 A. 599; See 6 N. S. 15.

ART. 10.—The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed.

C. P. 13; 6 N. S. 630; 7 N. S. 110, 408; 8 N. S. 21; 1 L. 248; 11 L. 16, 476; 2 R. 253; 17 L. 4; 3 M. 66; 582; 8 M. 132; 2 N. S. 93; 4 N. S. 1; 5 N. S. 587; 19 L. 216; 8 R. 407.

But the effect of acts passed in one country, to have effect in an other country, is regulated by the laws of the country where they are to have effect.

6 L. 398; 2 R. 253; 2 A. 659; 8 A. 212.

The exception made in the second paragraph of this article does not hold, when a citizen of another State of the Union, or a citizen or subject of a foreign state or country, disposes by will or testament, or by any other act *causâ mortis* made out of this State, of his moveable property situated in this State, if at the time of making said will or testament, or any other act *causâ mortis*, and at the time of his death, he resides and is domiciliated out of this State.

3 A. 579; 5 N. S. 49, 569; 6 L. 398; 7 L. 138.

ART. 11.—Individuals cannot by their conventions, derogate from the force of laws made for the preservation of public order or good morals.

But in all cases in which it is not expressly or impliedly prohibited, they can renounce what the law has established in their favor, when the renunciation does not affect the rights of others, and it is not contrary to the public good.

3 M. 583; 3 L. 512; 9 L. 590; 4 L. 123; 11 R. 302; 1 A. 297, 435; 3 A. 294, 323; see Art. 2170.

ART. 12.—Whatever is done in contravention of a prohibitory law, is void, although the nullity be not formally directed.

11 R. 302; 1 A. 265; 2 A. 492, 508, 667; see 6 L. 231; 4 L. 51.

CHAPTER IV.

OF THE APPLICATION AND CONSTRUCTION OF LAWS.

ART. 13.—When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit.

16 L. 264; 1 A. 424; 2 A. 595; 10 L. 97; see 13 L. 497; 3 R. 462; 5 N. S. 140.

ART. 14.—The words of a law are generally to be understood in their most known and usual signification, without attending so much to the niceties of grammar rules as to the general and popular use of the words.

ART. 15.—Terms of art or technical terms and phrases, are to be interpreted according to their received meaning and acceptance with the learned in the art, trade or profession to which they refer.

ART. 16.—Where the words of a law are dubious, their meaning may be sought by examining the context, with which the ambiguous words, phrases and sentences may be compared, in order to ascertain their true meaning.

ART. 17.—Laws *in pari materia*, or upon the same subject matter, must be construed with a reference to each other; what is clear in one statute may be called in aid to explain what is doubtful in another.

5 A. 171, see 3 R. 43; 17 L. 407.

ART. 18.—The most universal and effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the Legislature to enact it.

2 A. 100; 6 L. 130; 5 N. S. 140; post, art. 1941.

ART. 19. When, to prevent fraud, or from any other motives of public good, the law declares certain acts void, its provisions are not to be dispensed with on the ground that the particular act in question has been proved not to be fraudulent, or not to be contrary to the public good.

2 A. 732; 10 L. 264; 12 L. 19; 15 L. 394.

ART. 20. The distinction between odious laws and laws entitled to favor, with a view of narrowing or extending their construction, cannot be made by those whose duty it is to interpret them.

ART. 21.—In civil matters, where there is no express law, the Judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason, or received usages, where positive law is silent.

16 L. 395; 1 A. 133; 2 A. 87.

CHAPTER V.

OF THE REPEAL OF LAWS.

ART. 22.—Laws may be repealed either entirely or partially, by other laws.

ART. 23.—The appeal is either express or implied:

It is express, when it is literally declared by a subsequent law;

It is implied, when the new law contains provisions contrary to, or irreconcilable with those of the former law.

The repeal of a repealing law does not revive the first law, unless it be so particularly expressed.

Const. 1852, Art. 116.—No law shall be revised or amended by reference to its title; but in such case, the act revised, or section amended, shall be re-enacted and published at length.

3 A. 393; 5 N. S. 569; 7 L. 166; see 6 L. 130; 9 L. 535; 1 A. 54; 2 A. 919; 5 A. 121, 395; 2 L. 344; 3 N. S. 190; 10 L. 92; 1 N. S. 73, 194.

BOOK I.

OF PERSONS.

TITLE I.

OF THE DISTINCTION OF PERSONS.

ART. 24.—Laws on account of the difference of sexes have established between men and women essential differences with respect to their civil, social and political rights.

ART. 25.—Men are capable of all kinds of engagements and functions, unless disqualified by reasons and causes applying to particular individuals. Women cannot be appointed to any public office, nor perform any civil functions, except those which the law specially declares them capable of exercising.

Stat. 4th February, 1828, p. 22.—Hereafter it shall be lawful for widows and unmarried women of age to bind themselves sureties or endorsers for other persons, in the same manner, and with the same validity, as men who are of full age, any law to the contrary notwithstanding.

4 A. 593.

ART. 26.—Birth subjects children to the power and authority of their parents. The extent of this subjection on the one hand, and authority on the other, will be explained in its proper place.

See 10 L. 92.

ART. 27.—Children are Legitimate or Bastards: Legitimate children are those who are born of a marriage lawfully contracted; and Bastards are such as are born of an illicit union.

ART. 28.—Children born dead are considered as if they had never been born or conceived.

ART. 29.—Children in their mother's womb are considered, in whatever relates to themselves, as if they were already born; thus the inheritances which devolve to them before their birth, and which may belong to them, are kept for them, and curators are assigned to take care of their estate for their benefit.

ART. 30.—Posthumous children are those who are born after the death of their father.

ART. 31.—Persons of insane mind are those who do not enjoy the exercise and use of reason, after they have arrived at the age at which they ought, according to the course of nature, to possess it, whether the defect results from nature or accident. This defect disqualifies those who are subject to it, from contracting any species of engagement, or from managing their own estates, which are for this reason placed under the direction of a Curator.

ART. 32.—Persons who, by reason of infirmities, are incapable of managing their own affairs, have their persons and estates placed under the direction of Curators.

ART. 33.—Persons laboring under the disabilities stated in the two preceding articles, are not, on this account, deprived of any right or advantages, which, notwithstanding such infirmity, they can enjoy. They retain their estates, their capacity for inheriting, and such branches of the paternal power as are compatible with their situation.

ART. 34.—Age forms a distinction between those who have, and those who have not sufficient reason and experience to govern themselves and to be masters of their own conduct. But as nature does not always impart the same maturity and strength of judgment at the same age, the law determines the period at which persons are sufficiently advanced in life to be capable of contracting marriage, and of forming other engagements.

ART. 35.—A slave is one who is in the power of a master to whom he belongs. The master may sell him, dispose of his person, his industry and his labor: he can do nothing, possess nothing, nor acquire any thing but what must belong to his master.

ART. 36.—Manumitted persons are those who having been once slaves, are legally made free.

ART. 37.—Slaves for a time or *statu liberi*, are those who have acquired the right of being free at a time to come, or on a condition which is not fulfilled, or in a certain event which has not happened, but who, in the mean time, remain in a state of slavery.

1 A. 32 ; 9 L. 492.

ART. 38.—Freemen are those who have preserved their natural liberty, that is to say, who have the right of doing whatever is not forbidden by law.

ART. 39.—Emancipation and the other ways which free the son or daughter of a family from the father's authority, regard only the effects which the civil law gives to the paternal power, but changes in no respect those that are derived from natural right.

ART. 40.—Males who have not attained the age of fourteen years complete, and females who are under twelve, are under the age of puberty; and sons who have attained fourteen years complete, and daughters the age of twelve complete, are distinguished by the name of adults.

ART. 41.—Minors are those of both sexes, who have not yet attained the age of one and twenty years complete; and they remain under the direction of tutors or curators till that age. When they have arrived at it, they then are said to be of full age.

See 10 L. 92.

TITLE II.

OF DOMICIL AND THE MANNER OF CHANGING THE SAME.

ART. 42.—The domicile of each citizen is in the parish wherein his principal establishment is selected.

The principal establishment is that in which he makes his habitual residence; if he resides alternately in several places, and nearly as much in one as in another, and has not declared his intention in the manner hereafter prescribed, any one of the said places where he resides may be considered as his principal establishment, at the option of the persons whose interests are thereby affected.

11 L. 175; 12 L. 190; 14 L. 169; 18 L. 557; 11 R. 154; 2 A. 946; See 2 L. 29; 16 L. 313.

ART. 43.—A change of domicile is produced by the act of residing in another parish, combined with the intention of making one's principal establishment there.

C. P. 189, 166, 167, 168, 201; 8 N. S. 247; 8 L. 213; 12 L. 190, 169; 6 N. S. 467; See 2 L. 29; 9 M. 439.

ART. 44.—This intention is proved by an express declaration of it before the judges of the parishes, from which and to which he shall intend to remove.

This declaration is made in writing, is signed by the party making it, and registered by the judge.

2 R. 449; See 6 N. S. 467; 4 N. S. 51; 6 N. S. 247.

ART. 45.—In case this declaration is not made, the proof of this intention shall depend upon circumstances.

6 N. S. 247; 8 L. 213; 13 L. 293; 2 R. 449.

ART. 46.—A citizen accepting a temporary and precarious office, or one from which he may be removed at pleasure, retains his ancient domicile, if he has not evinced a contrary intention.

2 R. 466.

ART. 47.—An acceptance of an office conferred for life or during good behavior, implies an immediate transfer of the domicile of the officer to the parish in which he is required to exercise his functions.

But public officers, who perform duties throughout the State or in a district composed of several parishes, preserve the domicile they had before their appointment, unless they manifest a contrary intention.

ART. 48.—A married woman has no other domicile than that of her husband: the domicile of a minor not emancipated is that of his father, mother, or tutor; a person of full age, under interdiction, has his domicile with his curator.

2 L. 29; 9 L. 567; 2 R. 418, 427; 1 A. 315.

ART. 49.—Persons who have attained the age of majority, and who labor constantly with, or serve others, have the same domicile as those with whom they labor or serve, provided they reside with them.

TITLE III.

OF ABSENTEES.

CHAPTER I.

OF THE CURATORSHIP OF ABSENTEES.

ART. 50.—When a person possessed of either movable or immovable property within this State, shall be absent, or shall reside out of the State, without having appointed somebody to take care of his estate, or when the person thus appointed dies, or is either unable or unwilling to continue to administer that estate, then and in that case, the judge of the place where that estate is situated, shall appoint a curator to administer the same.

15 L. 81.

ART. 51.—In the appointment of this curator the judge shall prefer the wife of the absentee to his presumptive heirs, the presumptive heirs to the other relations, the relations to strangers, and creditors to those who are not otherwise interested, provided however that such persons be possessed of the necessary qualifications.

4 M. 370; 5 M. 89.

ART. 52.—The Curator appointed to the absentee shall take an oath well and faithfully to fulfil the duties of his administration and to give an account of it to those who have a right to demand it.

It is further his duty to cause a good and faithful inventory, with an appraisement of the property intrusted to his keeping, to be made by the judge or by any notary public duly authorized to that effect by the judge, and to give a good and sufficient security to the amount of this inventory for his administration.

2 A. 1010.

ART. 53.—The curator of the absentee has no other power than that of administering the estate of the absentee, without having a right to alienate or mortgage the same, under any pretence whatsoever.

He is moreover bound, with respect to this administration, by the same obligations, responsibility and mortgage by which tutors are bound, and he has a right to the same annual compensation for his services.

Stat. 28th March, 1840, p. 124.—§ 6. Whenever the Curator or Attorney in fact of an absentee shall apply to the Court of Probates, by a petition made under oath to the best of his knowledge and belief setting forth that the absentee has not been heard from for the space of ten years, and that he has no heirs known to him residing in the State; or when such facts relative to any absentee shall be known to the Judge of the Court of Probates, or due and satisfactory proofs of the facts aforesaid shall be made to him by any other person than the Curator or Attorney in fact; it shall be his duty in all such cases to order the sale of the property of such absentee in the same manner, on the same conditions, and the funds to be paid into the State Treas-

ury in the same manner as in cases of vacant successions; provided, that in every case when a Curator of the absentee shall have been appointed and shall remain in the performance of his duty, it shall not be necessary to appoint a Curator, but the Curator of the absentee shall act as such.

5 L. 26.

ART. 54.—So long as this curatorship continues, all suits in which the absentee is interested, shall be prosecuted by or against the curator.

ART. 55.—The curatorship of the absentee ends:

1. When the absentee, or person residing out of the State, appoints an attorney in fact for the administration of his estate, whether it be the person who was appointed curator or any other person;

2. When after a certain time, without hearing of the absentee, his heirs cause themselves to be put provisionally in possession of his estate, in conformity with the law.

ART. 56.—The curator of the absentee is bound to give an account of his administration, as soon as it ends, either by the appointment of an attorney in fact by the absentee, or the putting into provisional possession of his heirs.

ART. 57.—If a suit be instituted against an absentee who has no known agent in the State, or for the administration of whose property no curator has been appointed, the judge, before whom the suit is pending, shall appoint a curator *ad hoc* to defend the absentee in the suit.

4 L. 257; 13 L. 252; 15 L. 371; 2 A. 562, 916, 1010; 3 N. S. 177; 6 N. S. 15; See 5 L. 43; 9 L. 72; 10 L. 14; 12 L. 230; 14 L. 415; 15 L. 51.

CHAPTER II.

OF THE PUTTING INTO PROVISIONAL POSSESSION THE HEIRS OF AN ABSENTEE.

ART. 58.—When a person shall not have appeared at the place of his domicile or habitual residence, and when such person shall not have been heard of for five years, his presumptive heirs may, by producing proof of the fact, cause themselves to be put by the competent judge into provisional possession of the estate which belonged to the absentee at the time of his departure, or at the time he was heard of last, on condition of their giving security for their administration.

11 M. 443.

ART. 59.—If the absentee has left a power of attorney, his presumptive heirs cannot cause themselves to be put into provisional possession, until seven years shall have elapsed since the last intelligence of him has been received.

ART. 60.—It is the same if the power of attorney shall have expired, and in this case the property of the absentee shall be administered as is ordained in the first chapter of the present title.

ART. 61.—The putting into provisional possession can be ordered previous to the expiration of the terms before mentioned, when it shall be shown that there are strong presumptions that the person absent has perished.

ART. 62.—The Judge in pronouncing upon this demand shall take into consideration the motives of the absence and the reasons which may have prevented the absentee from being heard of.

ART. 63. When the presumptive heirs shall have been put into provisional possession of the estate of the absentee, the will made by him, if there be any such will, may be presented or opened at the request of the person interested, and the testamentary heirs, the legatees, donees, as well as those who have any rights to or claims upon his property, which depend upon the death of the said absentee, may provisionally prosecute their claims and exercise their rights on the condition of their giving security.

ART. 64.—If the testament contain an institution of an universal heir, he shall be preferred to the presumptive heirs, unless they are forced heirs, and shall be put into provisional possession of the estate of the absentee, but on giving security for his administration.

ART. 65.—The husband or wife of the absentee, who is not separated in estate from him or her, and who wishes to continue to enjoy the benefit of the community or partnership of matrimonial gains, which existed between them, may prevent the provisional possession or exercise of all the rights which may depend upon the death of the absentee, and claim and preserve for himself or herself in preference to any other person, the administration of the estate of his or her absent husband or wife.

If on the contrary the husband or wife of the absentee chooses rather to have the community dissolved, he or she may exercise and claim all his or her rights, both legal and conventional, on his or her giving security for such things as may be liable to be restored.

The wife who elects to have the community continued, has, notwithstanding, the right of renouncing it afterwards.

ART. 66.—Provisional possession is but a deposit, which invests those who have obtained it, with the administration of the estate of the absentee, and for which they remain accountable to him, in case he reappears or is heard of again.

The security therefore to be given by those who are put into provisional possession, ought not to exceed the probable amount of the injury which their mal-administration can cause.

ART. 67.—It shall be the duty of such as shall have obtained provisional possession, or of the husband or wife who shall have been continued in the administration of the community, to cause an inventory of the movables, slaves and credits of the absentee, to be made by the Judge or by any notary public duly authorized to that effect by the Judge.

The Judge shall order, if necessary, that the whole or part of the movables be sold, and in case of sale, both the amount of the sale and the profits which may have accrued, shall be either laid out in the purchase of real property, or placed at interest in a safe manner.

See amendment to Art. 53.

ART. 68.—Those who shall have obtained either the provisional possession or legal administration, may petition for their own security for the appointment, by the Judge, of two persons well acquainted with such affairs and sworn by the Judge, for the purpose of examining the

immovables of the absentee, and reporting their condition; and the report of such persons shall be afterwards approved by the Judge, and the expenses attending the same shall be paid out of the estate of the absentee.

ART. 69.—If the absentee shall reappear after the putting into provisional possession of his heirs, they shall be bound to return him the annual revenues of his property in the following proportions:

Of the first five years, two-thirds;

Of the five years ensuing, one-half;

Of the next five years, one-third.

After thirty years absence, the whole of the revenue shall belong to those who shall have been put into provisional possession.

ART. 70.—Those persons who enjoy only in virtue of the provisional possession, can neither alienate nor mortgage the immovables and slaves of the absentee.

But if it should be found necessary to sell any of the slaves, the sale of them may be ordered by the Judge, who must require that the proceeds be placed at interest in a safe manner, or invested in immovables and slaves.

ART. 71.—If the absence has lasted thirty years since the provisional possession, or since the time when the husband or wife who held their estate in common shall have taken the administration of the estate of the absentee, or if one hundred years have elapsed since the birth of the absentee, then the sureties shall be discharged, and all such as may have rights, may petition for the partition of the estate of the absentee, and cause themselves to be put in absolute possession by the Judge.

ART. 72.—The succession of the absentee shall be opened from the day of his or her death duly ascertained, for the benefit of such heirs as were capable of inheriting his estate at the time; and those who shall have enjoyed the estate of the absentee, shall be bound to restore the same, with the exception of the profits assigned them by the provisions of the above sixty-ninth article.

ART. 73.—If the absentee should reappear, or if his existence should be proved during the provisional possession, then the effect of the judgment which shall have ordered this provisional possession, shall cease, without however affecting the validity of any such conservatory measures prescribed in the first chapter of this title as may have been taken for the administration of the estate of the absentee.

ART. 74.—If the absentee should reappear, or if his existence should be proved, even after the putting into absolute possession, he shall recover his estate, such as it may happen to be, the price of such part of it as has been sold, or such property as has been bought with the proceeds of his estate which may have been sold.

ART. 75.—The children, or direct descending heirs of the absentee, may likewise, within thirty years to be computed from the day of the absolute possession, petition for the restitution of his estate, according to the preceding article.

ART. 76.—After judgment or during provisional possession or legal administration, no person who may have rights to exercise against the

absentee, can prosecute such rights, except against those who have been put into provisional possession of the estate, or who shall have been legally appointed administrators of the same.

CHAPTER III.

OF THE EFFECTS OF ABSENCE UPON THE EVENTUAL RIGHTS WHICH MAY BELONG TO THE ABSENTEE.

ART. 77.—Whoever shall claim a right accruing to a person whose existence is not known, shall be bound to prove that such person existed at the time when the right in question accrued, and until this be proved, his demand shall not be admitted.

ART. 78.—In case a succession shall be opened in favor of a person whose existence is not known, such inheritance shall devolve exclusively on those who would have had a joint right with him to the estate, or on those on whom the inheritance should have devolved if such person had not existed.

8 L. 374; 6 L. 653.

ART. 79.—The provisions of the two preceding articles shall not affect the right of claiming the inheritance and any other rights which the absentee or his representatives or assigns may have, which shall be extinguished only by the lapse of time which is established for prescription.

ART. 80.—As long as the absentee shall not appear, or a suit shall not be brought in his name, those who shall have been put in possession of the inheritance, shall have a right to the proceeds by them received *bonâ fide*.

CHAPTER IV.

OF THE EFFECTS OF ABSENCE RESPECTING MARRIAGE.

ART. 81.—Ten years of absence, without any news of the absentee, is a sufficient cause for the husband or wife of such absentee to contract another marriage, after having been authorized to do so by the judge, on due proof that such absence without any news continued the time required as aforesaid.

And if after the said marriage the husband or wife who was absent, happens to return, he or she shall be free of his or her first contract, and at liberty to contract another marriage, and the marriage entered into by the husband or wife during and on account of the absence, shall remain firm and valid.

CHAPTER V.

OF THE CARE OF MINOR CHILDREN WHERE THE FATHER HAS DISAPPEARED.

ART. 82.—If a father has disappeared, leaving minor children born during his marriage, the mother shall take care of them and shall ex-

ercise all the rights of her husband with respect to their education and the administration of their estate.

ART. 83.—But if the mother contracts a second marriage, she cannot preserve this superintendence of her children, but with the consent of a meeting of the family, composed of relations or friends of the father.

ART. 84.—If this superintendence is refused to her, a provisional tutor shall be appointed for the children, in the manner prescribed in the title of *minors, and of tutorship and curatorship*.

ART. 85.—There shall be appointed for the children a provisional tutor in the manner herein directed, if at the time of the disappearance of the father, the mother should be dead, or if she should die before their attaining the age of majority.

ART. 86.—The same thing shall take place if the husband or wife who have disappeared, have left minor children born of a former marriage.

TITLE IV.

OF HUSBAND AND WIFE.

CHAPTER I.

OF MARRIAGE

ART. 87.—The law considers marriage in no other view than as a civil contract.

ART. 88.—The law prescribes :

1. The manner of contracting and celebrating marriages ;
2. The legal effects and consequences of marriage ;
3. The manner in which marriages may be dissolved.

ART. 89.—Such marriages only are recognized by law as are contracted and solemnized according to the rules which it prescribes.

ART. 90.—Marriage is a contract intended in its origin to endure until the death of one of the contracting parties ; yet this contract may be dissolved before the decease of either of the married persons, for causes determined by law.

CHAPTER II.

HOW MARRIAGES MAY BE CONTRACTED OR MADE.

ART. 91.—As the law considers marriage in no other view than that of a civil contract, it sanctions all those marriages, where the parties, at the time of making them were :

1. Willing to contract,
2. Able to contract,
3. Did contract pursuant to the forms and solemnities prescribed by law.

ART. 92.—No marriage is valid to which the parties have not freely consented.

Consent is not free :

1. When given to a ravisher, unless it has been given by the party ravished, after she has been restored to the enjoyment of liberty ;
2. When it is extorted by violence ;
3. When there is a mistake respecting the person, whom one of the parties intended to marry.

ART. 93.—Ministers of the gospel and magistrates, intrusted with the power of celebrating marriages, are prohibited to marry any male under the age of fourteen years, and any female under the age of twelve; and if any of them are convicted of having married such persons, he shall be removed from his office, if a magistrate, or deprived forever of the right of celebrating marriages, if a minister of the gospel.

ART. 94.—Persons legally married are, until a dissolution of marriage, incapable of contracting another, under the penalties established by the laws of this State.

ART. 95.—Free persons and slaves are incapable of contracting marriage together; the celebration of such marriages is forbidden, and the marriage is void; there is the same incapacity and the same nullity with respect to marriages contracted by free white persons with free people of color.

ART. 96.—Marriage between persons related to each other in the direct ascending or descending line is prohibited. This prohibition is not confined to legitimate children, it extends also to children born out of marriage.

ART. 97.—Among collateral relations marriage is prohibited between brother and sister, whether of the whole or of the half blood, whether legitimate or illegitimate, and also between the uncle and the niece, the aunt and the nephew.

ART. 98.—All other impediments on account of relationship or affinity are abolished.

ART. 99.—The minor of either sex, who has attained the competent age to marry, must have received the consent of his father and mother, or of the survivor of them; and if they are both dead, the consent of his curator.

He must furnish proof of this consent to the judge to whom he applies for permission to marry.

ART. 100.—Those who have attained the age of majority, on their demanding permission to marry, must furnish the judge proof of their having attained that age.

CHAPTER III.

OF THE CELEBRATION OF MARRIAGES.

ART. 101.—Any priest, or minister of a religious sect, domiciliated in any one of the parishes of this State, shall have the right of celebrating marriages therein.

Stat. 3d February, 1826, p. 26, § 1.—If there be no priest or minister of a religious sect domiciliated in any one of the parishes of this State, the Judge of that parish, if required by either of the parties, is authorized to send to any priest or minister residing in a neighboring parish, a commission to come and celebrate marriages in the parish in which said Judge has his jurisdiction.

§ 2. All acts or parts of acts, contrary to the provisions of this act, are hereby repealed.

Stat. 5th March, 1842, p. 201, § 1.—From and after the passage of this act the articles of the Civil Code, 101, 102, shall be so construed that any priest or minister of a religious sect, domiciliated within the State of Louisiana, shall have the right of celebrating marriages in any one of the parishes of this State, and it shall no longer be required that the said priest or minister of a religious sect shall reside in the parish where he celebrates or performs the marriage ceremony.

Stat. 7th March, 1850, p. 42, § 1.—From and after the passage of this act, the regularly commissioned notaries of this State, in and for the parish of West Feliciana, during their term of office, shall be empowered to perform within said parish the ceremony of marriage, under the formalities required by law, and that said ceremony when performed by them, shall have the same legal effect as when performed by any other person or persons authorized by existing laws to perform the same.

ART. 102.—The judge of the parish may authorize one or more justices of the peace, within his jurisdiction, to celebrate marriages.

See amendments to Art. 101.

ART. 103.—No marriage can be celebrated without the special license of the parish judge, directed to the priest, minister or justice of the peace, who is to celebrate it.

ART. 104.—Before granting license to marry, the parish judge shall give notice thereof by advertisement placed at the door of the church or of the court house; and fifteen days after, if there be no opposition, he shall grant the license.

He can dispense with this publication, in cases which he shall deem urgent and important.

ART. 105.—Before granting the license, the judge shall require of the intended husband a bond, with a surety in a sum proportioned to his means, with condition that there exists no legal impediment to the marriage. The duration of the security is fixed to two years.

ART. 106.—Licenses for marriage can only be granted by the judge of the parish in which one at least of the parties is domiciliated.

ART. 107.—The marriage must be celebrated in presence of three witnesses of full age, and an act must be made of the celebration,

signed by the person who celebrates the marriage, by the parties and the witnesses.

3 L. 33; 6 L. 463.

ART. 108.—In case of an opposition to the marriage, if it be supported by the oath of the party making it, and by reasons sufficient in the opinion of the judge to authorize a suspension of the marriage, it shall be notified to the parties, and a day shall be assigned for a hearing thereon.

ART. 109.—The time fixed for the hearing of the parties and the decision on the opposition, shall not exceed ten days, from the day on which the opposition shall have been made.

ART. 110.—Any person may make an opposition to a marriage; but in cases in which the opposition is overruled, the party making it shall pay costs.

ART. 111.—No marriage can be contracted or celebrated by procurement.

CHAPTER IV.

OF THE NULLITY OF MARRIAGES.

ART. 112.—Marriages celebrated without the free consent of the married persons, or of one of them, can only be annulled upon application of both the parties, or of that one of them whose consent was not free.

When there has been a mistake in the person, the party laboring under the mistake can alone impeach the marriage.

ART. 113.—In the cases embraced by the preceding article, the application to obtain a sentence annulling the marriage, is inadmissible, if the married persons have, freely and without constraint, cohabited together after recovering their liberty or discovering the mistake.

ART. 114.—The marriage of minors, contracted without the consent of the father and mother, cannot for that cause be annulled, if it is otherwise contracted with the formalities prescribed by law; but such want of consent shall be a good cause for the father and mother to disinherit their children thus married, if they think proper.

ART. 115.—Every marriage contracted under the other incapacities or nullities enumerated in the second chapter of this title, may be impeached either by the married persons themselves, or by any person interested, or by the attorney general.

ART. 116.—The other causes of nullity, which existed by the ancient laws, are abolished.

3 A. 562.

ART. 117.—But in all cases where, conformably to the preceding article, the action of nullity may be instituted by any interested person, collateral relations, or children born of another marriage, cannot bring such an action during the life of the married persons, but only when they have acquired an actual interest therein.

ART. 118.—The married person, to whose prejudice a second marriage has been contracted, can sue for the nullity of such marriage, even during the life of the other party.

ART. 119.—The marriage, which has been declared null, produces

nevertheless its civil effects as it relates to the parties and their children, if it has been contracted in good faith.

ART. 120.—If only one of the parties acted in good faith, the marriage produces its civil effects only in his or her favor, and in favor of the children born of the marriage.

CHAPTER V.

OF THE RESPECTIVE RIGHTS AND DUTIES OF MARRIED PERSONS.

ART. 121.—The husband and wife owe to each other mutually, fidelity, support and assistance.

ART. 122.—The wife is bound to live with her husband and to follow him wherever he chooses to reside; the husband is obliged to receive her and to furnish her with whatever is required for the conveniences of life, in proportion to his means and conditions.

5 N. S. 60; 1 A. 315.

ART. 123.—The wife cannot appear in court without the authority of her husband, although she may be a public merchant, or possess her property separate from her husband.

6 L. 462; 10 L. 51, 400, 570; 1 R. 230, 463; 2 R. 363; 11 R. 506; 1 A. 260.

ART. 124.—The wife, even when she is separate in estate from her husband, cannot alienate, grant, mortgage or acquire either by gratuitous or incumbered title, unless her husband concurs in the act, or yields his consent in writing.

4 L. 305; 10 L. 570; 9 R. 173; 1 A. 264.

ART. 125.—The woman separated from bed and board has no need in any case of the authorization of her husband, as this separation carries with it not only a separation of property, but a dissolution of the community of acquests and gains.

Stat. 1st April, 1826, p. 162, § 2.—Whatever in the article two thousand four hundred and ten of the said Civil Code might be in contravention with the article one hundred and twenty-five of the same code, be and is hereby repealed; and that this last article shall be considered as the one being in force.

2 R. 1, 363.

ART. 126.—If the husband refuses to empower his wife to appear in court, the judge may give such authority.

6 L. 459.

ART. 127.—If the husband refuses to empower his wife to contract, the wife may cause him to be cited to appear before the judge, who may authorize her to make such contract, or refuse to empower her, after the husband has been heard, or has made default.

12 L. 70; 9 R. 173; 11 R. 506; 1 A. 264.

ART. 128.—If the wife is a public merchant, she may, without being empowered by her husband, obligate herself in any thing relating to her trade; and in such case, her husband is bound also, if there exists a community of property between them.

She is considered as a public merchant, if she carries on a sepa-

rate trade, but not if she retails only the merchandise belonging to the commerce carried on by her husband.

3 R. 329; 6 A. 57.

ART. 129.—If the husband is under interdiction or absent, the judge may, when satisfied of the fact, authorize the wife to sue or to be sued, or to make contracts.

2 R. 232; 11 R. 506; 1 A. 264.

ART. 130.—Every general authority, even although stipulated for in the marriage contract, is void, except so far as it respects the administration of the property of the wife.

ART. 131.—Proceedings to annul the acts of the wife for want of authority can be instituted only by the husband or wife, or by their heirs.

ART. 132.—The wife may make her last will without the authority of her husband.

CHAPTER VI.

OF THE DISSOLUTION OF MARRIAGE.

ART. 133.—The bond of matrimony is dissolved,

1. By the death of the husband or wife;

2. By a divorce legally obtained;

3. Whenever the marriage is declared null and void, for one of the causes mentioned in the 4th chapter of this title; or when another marriage is contracted, on account of absence, when authorized by law.

Separation from bed and board does not dissolve the bond of matrimony, since the separated husband and wife are not at liberty to marry again; but it puts an end to their conjugal cohabitation, and to the common concerns which existed between them.

CHAPTER VII.

OF SECOND MARRIAGES.

ART. 134.—The wife shall not be at liberty to contract another marriage until ten months after the dissolution of her preceding marriage.

TITLE V.

OF THE SEPARATION FROM BED AND BOARD

CHAPTER I.

OF THE CAUSES OF SEPARATION FROM BED AND BOARD.

ART. 135.—Separation from bed and board, as it formerly existed according to the laws of the country, shall take place for the following causes.

7 L. 281.

ART. 136.—The husband may claim a separation, in case of adultery on the part of the wife.

ART. 137.—The wife may also claim a separation in case of adultery on the part of her husband, when he has kept his concubine in their common dwelling.

ART. 138.—Married persons may reciprocally claim a separation on account of excesses, cruel treatment, or outrages of one of them towards the other, if such ill treatment is of such a nature as to render their living together insupportable.

9 L. 419, 452; 10 L. 249; 19 L. 557; 15 L. 61; 5 A. 32; 16 L. 26.

ART. 139.—Separation may also be reciprocally claimed in the following cases, to wit:

1. Of a public defamation on the part of one of the married persons towards the other;

2. Of abandonment of the husband by his wife or the wife by her husband;

3. Of an attempt of one of the married persons against the life of the other.

Const. 1852, Art. 114.—No divorce shall be granted by the Legislature.

Stat. 19th March, 1827, p. 130, § 1.—From and after the passing of this act, no divorce shall be granted unless for the following causes:

The husband may claim a divorce, in case of adultery on the part of his wife.

The wife may also claim a divorce in case of adultery on the part of her husband, when he has kept his concubine in the common dwelling, or openly and publicly in any other.

Married persons may reciprocally claim a divorce on account of excesses, cruel treatment, or outrages of one of them towards the other, if such excesses or ill treatments be of such a nature as to render their living together insupportable.

The condemnation of one of the married persons to an ignominious punishment, shall be for the other a sufficient cause of divorce.

A divorce may be equally claimed on the part of the husband and wife, when either shall abandon the other for the space of five years, and when he or she shall have been summoned to return to the common

dwelling, as is now provided for in cases of separation from bed and board, within one year prior to the application for such divorce.

§ 2. The district courts throughout the State, together with the parish court of New-Orleans, shall have exclusive original jurisdiction in cases of divorce, leaving to the parties or either of them the right of appeal to the supreme court in all such cases.

§ 3. All actions of divorce shall be tried, as all other cases; *Provided*, that no witnesses summoned by the parties shall be declared to be incompetent under the pretence of their being the allies or relations of either the plaintiff or defendant.

§ 4. Except in the cases where the husband or wife may have been sentenced to any infamous punishment, or convicted of adultery, as provided for in the first section of this act, no divorce shall be granted, unless a judgment of separation from bed and board shall have been previously rendered between the parties, and unless two years shall have expired from the date of the judgment of separation from bed and board, and no reconciliation may have taken place; *Provided*, that in the cases excepted above a judgment of divorce may be granted in the same decree which pronounced the separation of bed and board.

§ 5. The exceptions to an action of divorce shall be the same as those to the action of separation from bed and board, established by the articles 149 and 150 of the civil code now in force throughout the State.

§ 6. The action of divorce shall be accompanied with the same provisional proceedings to which a suit for separation from bed and board may give rise, and agreeably to the articles 144, 145, 146, 147 and 148 of the civil code now in force within this State.

§ 7. That the effects of a divorce shall not only be the same as are determined in the case of a separation from bed and board, by the articles 152, 153 and 154 of the civil code now in force in this State; but that it shall also dissolve for ever the bonds of matrimony between the parties, and place them in the same situation with respect to each other as if no marriage had ever been contracted between them.

§ 8. If the wife who has obtained the divorce has not sufficient means for her maintenance, the court may allow her, in its discretion, out of the property of her husband, alimony which shall not exceed one third of his income. This alimony shall be revocable, in case it should become unnecessary, and in case the wife should contract a second marriage.

§ 9. In case the divorce is granted in the decree pronouncing the separation from bed and board, the effects of such divorce shall be the same as regulated by the civil code in case of separation from bed and board.

§ 10. In cases of divorce on account of adultery, the guilty party can never contract matrimony with his or her accomplice in the adultery under the penalty of being considered and prosecuted as guilty of the crime of bigamy, and under the penalty of nullity of his new marriage.

Stat. 2d April, 1832, p. 152, § 1.—In addition to the cases enumerated in the first section of this act entitled "An act relative to divorces," approved the nineteenth day of March, one thousand eight hundred

and twenty-seven, that whenever husband or wife has been charged with an infamous offence, as provided for by said section, and shall actually have fled from justice and gone beyond the jurisdiction of the State, the husband or wife of such fugitive as the case may be, may claim a divorce, on producing proofs to the judge who tries the suit for divorce, that his or her husband or wife has actually been guilty of such infamous offence, and has so fled from justice, and in such case it need not be necessary to obtain a separation from bed and board.

§ 2. When the defendant in such case is absent, an attorney shall be appointed to represent him against whom, contradictorily, the suit shall be prosecuted.

9 L. 243; 10 L. 251; 16 L. 26; 6 R. 135; 1 A. 315.

CHAPTER II.

OF THE PROCEEDINGS OF SEPARATION FROM BED AND BOARD.

ART. 140.—Separation is to be claimed, sued for and pronounced in the competent courts of justice; it cannot be made the subject of arbitration.

6 A. 361.

ART. 141.—Separation grounded on abandonment by one of the married persons can be admitted only in the case when he or she has withdrawn himself or herself from the common dwelling, without a lawful cause, has constantly refused to return to live with the other, and when such refusal is made appear in the manner hereafter directed.

ART. 142.—The absence of the husband or wife, which has had a lawful cause, although it shall appear that the absentee has not been heard of, cannot authorize a demand of separation, except so far as is provided in the title of *absent persons*.

ART. 143.—The abandonment with which the husband or wife is charged, must be made appear by three reiterated summonses made to him or her from month to month, directing him or her to return to the place of the matrimonial domicile, and followed by a judgment which has sentenced him or her to comply with such request, together with a notification of the said judgment, given to him or her from month to month for three times successively.

The summons and notifications shall be made to him or her at the place of his or her usual residence, if he or she lives in this State, and if absent, at the place of the residence of the attorney who shall be appointed to him or her by the judge for that purpose, at the suit of the husband or wife praying for separation from bed and board.

CHAPTER III.

OF THE PROVISIONAL PROCEEDINGS TO WHICH A SUIT FOR SEPARATION MAY GIVE OCCASION.

ART. 144.—If there are children of the marriage, whose provisional keeping is claimed by both husband and wife, the suit being yet pend

ing and undecided, it shall be granted to the husband, whether plaintiff or defendant, unless there should be strong reasons to deprive him of it, either in whole or in part, the decision whereof is left to the discretion of the judge.

ART. 145.—If the wife, who sues for a separation, has left or declared her intention to leave the dwelling of her husband, the judge shall assign the house wherein she shall be obliged to dwell until the determination of the suit.

The wife shall be subject to prove her said residence as often as she may be required to do so, and in case she fails so to do, every proceeding on the separation shall be suspended.

ART. 146.—If the wife has not a sufficient income for her maintenance during the suit for separation, the judge shall allow her a sum for her support, proportioned to the means of the husband.

The husband cannot be compelled to pay this allowance, unless the wife proves that she has constantly resided in the house appointed by the judge.

1 N. S. 93.

ART. 147.—During the suit for separation, the wife may, for the preservation of her rights, require an inventory and appraisement to be made of the movables and immovables which are in possession of her husband, and an injunction restraining him from disposing of any part thereof in any manner.

ART. 148.—From the day on which the action of separation shall be brought, it shall not be lawful for the husband to contract any debt on account of the community, nor to dispose of the immovables or slaves belonging to the same, and any alienation by him, made after that time, shall be null, if it be proved that such alienation was made with the fraudulent view of injuring the rights of the wife.

6 L. 459.

CHAPTER IV.

OF OBJECTIONS TO THE ACTION OF SEPARATION FROM BED AND BOARD

ART. 149.—The action of separation shall be extinguished by the reconciliation of the parties, either after the facts which might have given ground to such action, or after the action has been commenced.

See amendment to Art. 139, § 5; 9 L. 243.

ART. 150.—In either case the plaintiff shall be precluded from bringing his action; but he shall be at liberty to bring a new suit for causes arising since the reconciliation, and therein make use of the former motives to corroborate his new action.

See amendment to Art. 139, § 5; 9 L. 243.

CHAPTER V.

OF THE EFFECTS OF SEPARATION FROM BED AND BOARD.

ART. 151.—Separation from bed and board carries with it separation of goods and effects

ART. 152.—In case of separation from bed and board, the party against whom it shall have been pronounced, shall lose all the advantages or donations the other party may have conferred by the marriage contract or since, and the party at whose instance the separation has been obtained shall preserve all those to which such party would have been entitled; and these dispositions are to take place even in case the advantages and donations were reciprocally made.

ART. 153.—In all cases of separation, the children shall be placed under the care of the party who shall have obtained the separation, unless the judge shall, for the greater advantage of the children, and with the advice of the meeting of the family, order that some or all of them shall be intrusted to the care of the other party.

ART. 154.—This separation shall not in any case deprive the children born of the marriage, of any of the advantages which were secured to them by law, or by the marriage contract of their father and mother; but there is no right to any claim on the part of such children, except in the manner and under the circumstances where such claims would have taken place if there had been no separation.

TITLE VI.

OF MASTER AND SERVANT.

CHAPTER I.

OF THE SEVERAL SORTS OF SERVANTS.

ART. 155.—There are in this State two classes of servants, to wit: the free servants and the slaves.

CHAPTER II.

OF FREE SERVANTS.

ART. 156.—Free servants are in general all free persons who let, hire, or engage their services to another in this State, to be employed therein at any work, commerce or occupation whatever, for the benefit of him who has contracted with them, for a certain price or retribution, or upon certain conditions.

ART. 157.—There are three kinds of free servants in this State, to wit:

1. Those who only hire out their services by the day, week, month or year, in consideration of certain wages; the rules which fix the extent and limits of those contracts are established in the title of letting and hiring;

2. Those who engage to serve for a fixed time for a certain consideration, and who are therefore considered not as having hired out but as having sold their services;

3. Apprentices, that is, those who engage to serve any one, in order to learn some art, trade or profession.

Whatever relates to persons whose time of service is sold for paying their passage, is prescribed by a special law, which is not repealed by this title.

ART. 158.—The minor cannot be bound to serve, but with the consent of his father and mother, tutor or curator. If he has no tutor or curator, with the consent of the judge of the parish where the act of his engagement is passed.

ART. 159.—The time of the engagement of the minors, if there be no stipulation that it shall terminate sooner, shall expire, for males when they attain the age of eighteen years, and females when they attain the age of fifteen.

Stat. 1st April, 1826, p. 162.—§ 4. The one hundred and fifty-eighth and one hundred and fifty-ninth articles of the Civil Code be and are hereby repealed, and that the act of the legislature entitled: "An act for the regulation of the rights and duties of apprentices and indented servants," passed on the twenty-first of May, eighteen hundred and six, be and is hereby revived in everything which is not contrary or repugnant to the provisions of the Civil Code, which are not expressly repealed by this act.

Stat. 21st May, 1806, p. 44.—Whereas great inconveniences do frequently result from losses sustained by masters and mistresses of apprentices and indented servants, for want of some uniform mode of binding them and regulating their conduct and behavior during the term of time expressed in their respective indentures, and to prevent them from absenting themselves from the service of their master or mistress, and punish them for their improper behavior, as well as to make the covenants between them mutually obligatory; for remedy thereof,

§ 1. All and every person or persons who may be bound to serve either as an apprentice in any art, mystery or occupation, or as a servant for the sole purpose of ordinary or hard labor, shall be bound to serve the term of time expressed in their indentures respectively: *Provided always*, That if the party so bound as aforesaid be under the age of twenty-one years, he or she must be bound with the assent of his or her parent guardian or curator, or in case there be no such person in the county where the apprentice or servant resides, then by and with the assent of the mayor of any city which now exists or may be erected hereafter in the territory of Orleans, or the judge of the proper county, with the approbation of one or more justices of the peace within the same: *Provided nevertheless*, if the party so bound be a female, that the term of years of her apprenticeship shall expire at or before she arrives at the age of eighteen years, and if a male at the period in which he shall arrive at the age of twenty-one years; and if the party either male or female be over the age of twenty-one years at the time of his or her entering into indenture either of apprenticeship or servitude, they shall be perfectly at liberty to bind him or herself (if they be of sound mind and memory) for a time not exceeding seven years, agreeable to the provisions of this act, any law, usage or custom to the contrary notwithstanding.

§ 2. All indentures hereafter to be made and executed shall be signed and delivered by the party so bound, in presence of at least two witnesses, one of whom (if the party be under the age of twenty-one years) shall be either the parent, guardian or curator (if such exist), before the mayor of any city, or the judge of any county in this territory who shall certify the same; and the said mayor or judge, as the case may be, shall receive for either of their services in and about the same, the sum of five dollars; and the said judge may or shall order the parties applying for indentures of apprenticeship, to draw the same according to the following form, viz.

"This indenture, made the _____ day of _____ in the year of our Lord _____ Witnesseth, that for divers good causes and considerations, A. B. (if under the age of twenty-one years, say with the consent of his or her parent, guardian or curator, or if none such exist, then with the consent and approbation of the mayor, judge, or two justices of the peace in the proper county), hath bound and put him or herself apprentice unto C. D. to learn the art, trade, mystery, or occupation of _____ which the said C. D. now useth, and to dwell and continue with the said C. D., his executors or administrators, from the day of the date hereof, until the full end and term of _____ years; during all which period said apprentice shall faithfully serve his (or her) master or mistress, and obey his (or her) lawful commands, and not depart said service without their consent. And the said master or mistress, in consideration of the sum of _____ dollars, in hand paid by the said apprentice, in the said art, trade, mystery or occupation aforesaid, with all things thereunto belonging, shall and will teach or cause to be taught, and shall during the whole of said period find said apprentice with good and sufficient food, meat, drink, washing and lodging, (apparel if the indentures express the same.) In witness whereof, the said A. B. hath hereunto set his hand and seal, the day and year first above written.

Signed, sealed and delivered in presence of

F. F.
G. H.

A. B.

Seal.

And the following form shall hereafter be observed for indentures of servitude, viz.

"This indenture, made the _____ day of _____ in the year of our Lord _____ Witnesseth, that A. B. (if under twenty-one years of age, say with consent, &c., as in the preceding form), of the county of _____ in the territory of Orleans, for and in consideration of the sum of _____ dollars to him (or her) in hand paid by C. D. of the same place, as also for divers other good causes, hath bound and put himself servant to the said C. D., to serve him, his executors and assigns, from the day of the date hereof, for and during the term of _____ years thence next ensuing, during all which term the said servant, his said master, his executors and assigns, faithfully shall serve, and that honestly and obediently in all things as a good and dutiful servant ought to do; and the

said master or mistress, his or her executors and assigns, during the said term shall find and provide for the said A. B. sufficient meat, drink, apparel and lodging. In witness whereof the said A. B. hath, &c., as in the foregoing precedent."

§ 3. If any master or mistress shall abuse or cruelly or evilly treat or shall not discharge his or her duty towards his or her apprentice or servant, or if said apprentice or servant shall abscond or absent him or herself from the service of his or her master or mistress, without leave, or shall not do or discharge his or her duty to his or her master or mistress, then said master or mistress, or apprentice, or servant, being aggrieved, shall or may apply to the judge of any county where the parties reside for redress, who, after giving due notice to the party against whom the complaint is lodged, and bringing said parties (by warrant or otherwise), before him, shall take such order and direction between the said master or mistress, and apprentice or servant, as the equity and justice of the case may require.

§ 4. When any master or mistress shall remove from this territory or die, before the term of an apprentice who has been bound for the purpose of acquiring the knowledge of any art, mystery, or occupation, hath expired, then the mayor of any city, or the judge of any county within this territory, where such decedent had resided, shall have power to assign over the remainder of the term of apprenticeship to such other suitable person of the same trade, or calling, mentioned in the indenture; and the assigns shall have the same rights to the service of such apprentice as the master or mistress had at the time of his or her death or removal: *Provided*, That nothing in this section contained shall be so construed as to extend to servants whose indentures are assignable, and who have been bound for the sole purpose of ordinary and hard labor.

§ 5. Whenever any apprentice or bound servant shall abscond or absent him or herself from the service of his or her master without leave, that upon due proof being made to the satisfaction of any mayor or judge of any county court in this territory, the said mayor or judge shall have full power to compel the party thus absconding to serve his or her master or mistress, two days for every one that he or she has absented him or herself, or pay such damages as said mayor or judge may think equitable and just to his or her said master or mistress.

§ 6. In every case where any person shall be bound in any place, where there shall be a school established, either as an apprentice or servant, who shall be under the age of twenty-one years, there shall be a clause in their indentures binding the master or mistress to teach or cause to be taught the said apprentice or servant to read and write, as also to instruct him in the fundamental principles of arithmetic.

§ 7. All laws, usages and customs on the subject of apprentices are abrogated and repealed, and this act shall be in full force from and after the passage thereof.

ART. 160.—Persons who have attained the age of majority cannot bind themselves for a longer term than five years.

ART. 161.—Engagements of service contracted in a foreign country for a longer term shall be reduced to five years, to count from the day of the arrival of the person bound in this State.

ART. 162.—The act of the engagement of service must be passed before a notary public, or a person authorized to perform his duties. It must be read to the parties in presence of two witnesses, and must be signed by them, the witnesses and the notary.

ART. 163.—An implied condition of the contract entered into between the master and bound servant or apprentice, is that the latter binds himself to serve the former during all the time of his engagement, and the master on his side binds himself to maintain the indentured servant or apprentice during the same time.

The master is also bound to instruct the apprentice in his art, trade or profession, and to teach him or cause him to be taught to read, write and cypher.

ART. 164.—Bound servants and apprentices and their masters may be compelled to the specific performance of their respective engagements, but these engagements may be rescinded before the time fixed by the contract, either at the suit of such bound servants or apprentices respectively, or at the demand of the master, if they have a just cause to claim such rescission, and in such case the judge shall direct a restitution of such part of the money received on account of such engagement, in proportion to the time not yet elapsed of that which has been fixed by the indenture, unless such rescission is occasioned by the fault of him who paid the money, in which case no restitution shall be made.

ART. 165.—If any master shall abuse, or cruelly or evilly treat his bound servant or apprentice, or shall not discharge his duty towards him, or if the bound servant or apprentice shall abscond or absent himself from the service of his master without leave, or shall not discharge his duty to his master, in any of these cases there will be a sufficient cause to release the aggrieved party from his engagement, or to grant him such other redress as the equity and the nature of the case may require, at the discretion of the judge.

ART. 166.—The death of the master of the apprentice dissolves the engagement of the latter, in the condition in which it is, and there can be no claim for remuneration on either side. But if the heir or one of the heirs of the master be a man of the same condition, trade or profession, he can cause himself to be authorized to take the place of the deceased with regard to the apprentice.

ART. 167.—A master may correct his indentured servant or apprentice for negligence or other misbehavior, provided he does it with moderation, and provided he does not make use of the whip; but he cannot exercise such rights with those who only let their daily services.

10 M. 83.

ART. 168.—The master may bring an action against any man for beating or maiming his servant, but in such case he must assign as a cause of action his own damage arising from the loss of his service, and this loss must be proved upon the trial.

ART. 169.—A master may justify an assault in defence of his servant, and a servant in defence of his master, the master because he has an interest in his servant, not to be deprived of his service; the servant, because it is a part of his duty, for which he receives wages, to stand by and defend his master.

ART. 170.—The master is answerable for the offences and *quasi* offences committed by his servants, according to the rules which are explained under the title of *quasi-contracts* and *quasi-crimes or offences*.

2 A. 406.

ART. 171.—The master is answerable for the damage caused to individuals or to the community in general by whatever is thrown out of his house into the street or public road; inasmuch as the master has the superintendence and police of his house, and is responsible for the faults committed therein.

CHAPTER III.

OF SLAVES.

ART. 172.—The rules prescribing the police and conduct to be observed with respect to slaves in this State, and the punishment of their crimes and offences, are fixed by special laws of the Legislature.

ART. 173.—The slave is entirely subject to the will of his master, who may correct and chastise him, though not with unusual rigor, nor so as to maim or mutilate him, or to expose him to the danger of loss of life, or to cause his death.

3 A. 618; See 2 L. 531; 9 L. 492; 7 N. S. 350.

ART. 174.—The slave is incapable of making any kind of contract, except those which relate to his own emancipation.

3 A. 556.

ART. 175.—All that a slave possesses, belongs to his master; he possesses nothing of his own, except his *peculium*, that is to say, the sum of money, or movable estate, which his master chooses he should possess.

3 A. 637.

ART. 176.—They can transmit nothing by succession or otherwise; but the succession of free persons related to them which they would have inherited had they been free, may pass through them to such of their descendants as may have acquired their liberty before the succession is opened.

See 6 L. 560.

ART. 177.—The slave is incapable of exercising any public office, or private trust; he cannot be tutor, curator, executor nor attorney; he cannot be a witness in either civil or criminal matters, except in cases provided for by particular laws. He cannot be a party in any civil action, either as plaintiff or defendant, except when he has to claim or prove his freedom.

4 M. 577; 6 M. 731; 8 M. 161; 6 A. 223; 7 N. S. 350; See 9 L. 488, 492.

ART. 178.—When slaves are prosecuted in the name of the State, for offences they have committed, notice must be given to their masters.

1 A. 173; 6 A. 37.

ART. 179.—Masters are bound by the acts of their slaves done by their command, as also by their transactions and dealings with respect

to the business in which they have intrusted or employed them; but in case they should not have authorized or intrusted them, they shall be answerable only for so much as they have benefited by the transaction.

ART. 180.—The master shall be answerable for all the damages occasioned by an offence or *quasi*-offence committed by his slave, independent of the punishment inflicted on the slave.

9 L. 339; 7 L. 592; 1 A. 173; 2 A. 406; 6 A. 476; 10 R. 234.

ART. 181.—The master, however, may discharge himself from such responsibility by abandoning his slave to the person injured; in which case such person shall sell such slave at public auction in the usual form, to obtain payment of the damages and costs; and the balance, if any, shall be returned to the master of the slave, who shall be completely discharged, although the price of the slave should not be sufficient to pay the whole amount of the damages and costs; *provided* that the master shall make the abandonment within three days after the judgment awarding such damages shall have been rendered; *provided*, also, that it shall not be proved that the crime or offence was committed by his order; for in case of such proof the master shall be answerable for all damages resulting therefrom, whatever be the amount, without being admitted to the benefit of the abandonment.

1 A. 173; 2 A. 406; 7 L. 586.

ART. 182.—Slaves cannot marry without the consent of their masters, and their marriages do not produce any of the civil effects which result from such contract.

6 M. 559.

ART. 183.—Children born of a mother then in a state of slavery, whether married or not, follow the condition of their mother; they are consequently slaves and belong to the master of their mother.

3 A. 492, 600.

ART. 184.—A master may manumit his slave in this State, either by an act *inter vivos* or by a disposition made in prospect of death, *provided* such manumission be made with the forms and under the conditions prescribed by law; but an enfranchisement, when made by a last will, must be express and formal, and shall not be implied by any other circumstances of the testament, such as a legacy, an institution of heir, testamentary executorship or other dispositions of this nature, which in such case shall be considered as if they had not been made.

Stat. 18th March, 1852, p. 214.—§ 1. Hereafter no slave or slaves shall be emancipated in this State, except upon express condition that when emancipated, they shall be sent out of the United States within twelve months after being emancipated, and that the police jurors of the several parishes of this State, and the common council of New Orleans, before granting any act of emancipation of any slave or slaves, shall require the owner or owners, person or persons so desiring said emancipation, to deposit in the parish treasury in which said act is to be made, or with the mayor of the city of New-Orleans, the sum of one

hundred and fifty dollars for each slave to be so emancipated, to be applied in payment of voyage to Africa and support after arrival.

§ 2. All slaves whose claims for emancipation has not yet been perfected by the proper authorities, shall only receive the same upon the conditions of the first section of this act, and upon failing to comply with the same, shall be hired out by the owner or owners, person or persons having the legal charge of said slave or slaves, and in case none such exists, then the judge of the district shall appoint an agent for that purpose, who shall hire out said slave or slaves until the sum of one hundred and fifty dollars have been made and deposited as aforesaid, after which, the said act of emancipation may be perfected and said slave or slaves sent to Liberia within one year; *Provided*, that in case any slave or slaves, after having been so emancipated, should not be sent to Liberia within one year after being liberated, or should return again after being sent, said slave or slaves shall forfeit their freedom and become slaves and revert to their former owners or their legal representatives as such.

§ 3. This act shall not take effect until six months from and after its passage.

4 R. 409; 5 R. 200.

ART. 185.—No one can emancipate his slave, unless the slave has attained the age of thirty years, and has behaved well at least for four years preceding his emancipation.

Stat. 9th March 1807, p. 82.—§ 1. No person shall be compelled, either directly or indirectly, to emancipate his or her slave or slaves, but in the case only where the said emancipation shall be made in the name and at the expense of the territory, by virtue of an act of the Legislature of the same.

§ 2. No person shall emancipate any of his or her slaves, unless said slave or slaves be thirty years of age, and unless besides, he, she or they have during the four years previous to the day of his, her or their emancipation, led an honest conduct, without having ran away, and without having committed any robbery, or having been guilty of any other criminal misdemeanor, provided the conditions required to be complied with by the present section be not necessary in cases when the slave or slaves to be emancipated shall have saved the life of their master, of his wife, or of any of his children.

§ 3. It shall be the duty of every person who intends to emancipate any one of his or her slaves, to declare to the judge of his or her county, that the said slave or slaves to be set free have the age, and have led the conduct requisite by the second section of this act, to entitle them to their emancipation. It shall be the duty of the judge to issue immediately an order that the following notice be posted up in his county, both in the French and English languages, to wit:

A. N., inhabitant in the county of _____, having intention to emancipate his or her slave or slaves (male or female), named _____ and _____ years of age, every person who may have any legal opposition to said emancipation is required to file said oppositions in the office of the county court of said county, within forty days from the date of the present notice.

Signed
Sheriff of the county of _____

M. R.

After the expiration of said delay, if there be no opposition, or if the judge decide the oppositions made are not valid, it shall be the duty of said judge to authorize the petitioner to cause the instrument of such emancipation to be made, which said emancipation shall be valid to all intents and purposes, unless the same should be contested afterwards, as having been made with a view to defraud creditors, minors, or people either absent from the territory, or residing out of the county in which notice of such an intended emancipation was given, and this intention to defraud creditors shall always be presumed, if at the time of the emancipation taking place, the donor had not property sufficient to pay his or her said creditors, except the slave or slaves emancipated.

§ 4. Every act of emancipation made contrary to the provisions of the preceding section shall be null and void; and the proprietor who shall have consented thereto, and the public officer who shall have passed said instrument, shall both, on conviction, forfeit the sum of one hundred dollars,—the half of which shall be to the benefit of the informer, and the other half to the treasury of the territory.

§ 5. Every act of emancipation of slave or slaves shall include with it the tacit but formal obligation on the part of the donor to nourish and maintain said slave or slaves by him or her thus emancipated, when said slave or slaves shall be in want, owing to sickness, old age, insanity, or any other proved infirmity. And if in such case, said donor should refuse to fulfil this obligatory duty of humanity, it shall be the duty of any judge to whom such a refusal shall be made to appear and be proved, to condemn said donor to pay every month to the emancipated slave or slaves, by him or her thus abandoned, such sum as said judge may, in his discretion, determine sufficient to assure the subsistence, the maintenance and treatment of said emancipated slave or slaves, during the whole time that he, she or they shall be unable to provide for their own maintenance and support.

§ 6. When the emancipation of any slave or slaves shall be made by testament or other act of last will, the formalities or conditions prescribed by the third and fifth sections of this act shall be fulfilled by the testamentary executors, administrators, heirs or representatives of the testator.

§ 7. All the provisions of any law in force in this territory, be, and the same are hereby repealed, in every thing which they may contain, contrary to the provisions of the present act.

§ 8. This act shall commence and be in force from and after the first day of September next, and not before, except the first section thereof, which shall be in force from and after the passage of this act.

Stat. 31st January, 1827, p. 13.—§ 1. Every person desiring to emancipate a slave who shall not have attained the age of thirty years, prescribed by the 185th article of the Civil Code, shall be bound to present to the parish judge, of the parish wherein such person shall reside, a petition in which he or she shall explain the motives which induce him to wish the emancipation of said slave; which petition shall be submitted by the said parish judge to the police jury at their next meeting, and if three-fourths of the members elected of the said police jury together with the parish judge be of opinion that the motives are suffi

cient to allow the said emancipation (which shall be certified, in the manner and form requisite for the other deliberations of police juries), the petitioner shall be authorized to proceed to the formalities required by the Civil Code, although his or her slave has not attained the age of thirty years.

§ 2. Nothing contained in the present act shall be so construed as to dispense the owner of any slave with the formalities prescribed by the existing laws.

§ 3. From and after the passing of this act, no slave shall be emancipated under its provisions unless said slave be a native of the State.

Stat. 16th March, 1842, p. 316, § 14.—All *statu liberi* now in the State shall, when they become free, be transported out of the State at the expense of the last owner, by proceeding before the parish judge at the suit of any citizen, and such *statu liberi*, when transported out of the State, shall, on returning into the State, be liable to all the penalties provided by law against free negroes or persons of color coming into the State.

Stat. 9th April, 1847, p. 81, § 1.—All the duties heretofore imposed on the parish judges by the laws of this State in connection with police juries, shall hereafter be performed by the president of said police juries, if not otherwise provided for by law.

1 R. 359; 3 R. 434; 5 R. 200; 3 A. 556; 5 A. 593; see 14 L. 441.

ART. 186.—The slave who has saved the life of his master, his master's wife, or one of his children, may be emancipated at any age.

See amendment to Art. 134; 5 R. 200.

ART. 187.—The master who wishes to emancipate his slave, is bound to make a declaration of his intentions to the judge of the parish where he resides; the judge must order notice of it to be published during forty days by advertisement posted at the door of the courthouse; and if, at the expiration of this delay, no opposition be made, he shall authorize the master to pass the act of emancipation.

5 R. 200; See amendments to Art. 185.

ART. 188.—The act of emancipation imports an obligation on the part of the person granting it, to provide for the subsistence of the slave emancipated, if he should be unable to support himself.

5 R. 200.

ART. 189.—An emancipation once perfected, is irrevocable, on the part of the master or his heirs.

5 R. 200.

ART. 190.—Any enfranchisement made in fraud of creditors, or of the portion reserved by law to forced heirs, is null and void; and such fraud shall be considered as proved, when it shall appear that at the moment of executing the enfranchisement the person granting it had not sufficient property to pay his debts or to leave to his heirs the portion to them reserved by law; the same rule will apply if the slave thus manumitted was specially mortgaged; but in this case the enfranchisement shall take effect, provided the slave or any one in his behalf shall pay the debt for which the mortgage was given.

3 A. 100; 4 A. 365.

ART. 191.—No master of slaves shall be compelled, either directly or indirectly, to enfranchise any of them, except only in cases where the enfranchisement shall be made for services rendered to the State, by virtue of an act of the Legislature of the same, and on the State satisfying to the master the appraised value of the manumitted slave.

ART. 192.—In like manner no master shall be compelled to sell his slave, but in one or two cases, to wit: the first, when being only co-proprietor of the slave, his co-proprietor demands the sale in order to make partition of the property; the second, when the master shall be convicted of cruel treatment of his slave, and the judge shall deem proper to pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused.

2 L. 581.

ART. 193.—The slave who has acquired the right of being free at a future time, is from that time capable of receiving by testament or donation. Property given or devised to him must be preserved for him, in order to be delivered to him in kind, when his emancipation shall take place. In the mean time it must be administered by a curator.

1 A. 32; 3 A. 467.

ART. 194.—The slave for years cannot be transported out of the State. He can appear in court to claim the protection of the laws in cases where there are good reasons for believing that it is intended to carry him out of the State.

1 A. 32; See 9 L. 433.

ART. 195.—If the slave for years dies before the time fixed for his enfranchisement, the gifts or legacies made him revert to the donor or to the heirs of the donor.

1 A. 32.

ART. 196.—The child born of a woman after she has acquired the right of being free at a future time, follows the condition of its mother, and becomes free at the time fixed for her enfranchisement, even if the mother should die before that time.

1 A. 32; See 8 M. 213.

TITLE VII.

OF FATHER AND CHILD.

CHAPTER I.

OF CHILDREN IN GENERAL.

ART. 197.—Children are either legitimate or illegitimate.

See 14 L. 542.

ART. 198.—Legitimate children are those who are born during the marriage.

ART. 199.—Illegitimate children are those who are born out of marriage.

ART. 200.—There are two sorts of illegitimate children.

Those who are born from two persons, who, at the moment when such children were conceived might have legally contracted marriage with each other; and those who are born from persons to whose marriage there existed at the time some legal impediment.

See Art. 222; 14 L. 542.

ART. 201.—Adulterous bastards are those produced by an unlawful connection between two persons, who, at the time when the child was conceived, were, either of them or both, connected by marriage with some other person.

See 14 L. 542.

ART. 202.—Incestuous bastards are those who are produced by the illegal connection of two persons who are relations within the degrees prohibited by law.

See 14 L. 542.

CHAPTER II.

OF LEGITIMATE CHILDREN.

SECTION I.—*Of Legitimacy resulting from Marriage.*

ART. 203.—The law considers the husband of the mother as the father of all children conceived during the marriage.

1 R. 581; 7 N. S. 548.

ART. 204.—The husband cannot, by alleging his natural impotence, disown the child, he cannot disown it even for cause of adultery, unless its birth has been concealed from him, in which case he will be permitted to prove that he is not its father.

ART. 205.—The child capable of living, which is born before the one hundred and eightieth day after the marriage, is not presumed to be the child of the husband: every child born alive more than six months after conception, is presumed to be capable of living.

ART. 206.—The same rule applies with respect to the child born three hundred days after the dissolution of the marriage, or after the sentence of separation from bed and board.

ART. 207.—The legitimacy of the child born three hundred days after the separation from bed and board has been decreed, may be contested, unless it be proved that there had been cohabitation between the husband and wife since such decree, because it is always presumed that the parties have obeyed the sentence of separation.

But in case of voluntary separation, cohabitation is always presumed, unless the contrary be proved.

ART. 208.—The presumption of paternity as an incident to the marriage is also at an end, when the remoteness of the husband from the wife has been such that cohabitation has been physically impossible.

ART. 209.—The husband cannot contest the legitimacy of the child born previous to the one hundred and eightieth day of marriage, in the following cases:

1. If he was acquainted with the circumstance of his wife being pregnant previously to the marriage;

2. If he was present at the registering of the birth or baptism of the child and signed the same, or if not knowing how to sign, he has put his ordinary mark to it, in presence of two witnesses.

6 A. 242.

ART. 210.—In all the cases above enumerated, where the presumption of paternity ceases, the father, if he intends to dispute the legitimacy of the child, must do it within one month, if he be in the place where the child is born, or within two months after his return, if he be absent at that time, or within two months after the discovery of the fraud, if the birth of the child was concealed from him, or he shall be barred from making any objection to the legitimacy of such child.

1 R. 581; 6 A. 242.

ART. 211.—If the husband die without having made such objection, but before the expiration of the time directed by law, two months shall be granted to his heirs to contest the legitimacy of the child, to be counted from the time when the said child has taken possession of the estate of the husband, or when the heirs shall have been disturbed by the child in their possession thereof.

6 A. 242.

SECTION II.—*Of the manner of proving legitimate filiation.*

ART. 212.—The filiation of legitimate children may be proved by a transcript from the register of birth or baptism, kept agreeably to law or to the usages of the country.

See 14 L. 542.

ART. 213.—If the register of births and baptisms is lost, or if no such register has been kept, it suffices for the child to show that he has been constantly considered as a child born during marriage.

See 11 L. 128.

ART. 214.—The being considered in this capacity is proved by a sufficient collection of facts demonstrating the connection of filiation and paternity which exists between an individual and the family to which he belongs.

The most material of these facts are :

That such individual has always been called by the surname of the father from whom he pretends to be born;

That the father treated him as his child, and that he provided as such for his education, maintenance and settlement in life;

That he has constantly been acknowledged as such in the world;

That he has been acknowledged as such within the family.

See 11 L. 128.

ART. 215.—If there be neither register of birth or baptism, nor this general reputation, or if the child has been registered under a false name, or as born of unknown parents, also if the child has been exposed or abandoned, or if his condition has been suppressed, the proof of his legitimate filiation may be made either by written or oral evidence.

ART. 216.—Proof against the legitimate filiation may be made by evidence that the plaintiff is not the child of the mother whom he pre-

tends to be his, and the maternity being proved, that he is not the child of the husband of the mother

CHAPTER III.

OF ILLEGITIMATE CHILDREN.

SECTION I.—*Of Legitimation.*

ART. 217.—Children born out of marriage, except those who are born from an incestuous or adulterous connection, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before their marriage or by their contract of marriage itself.

Every other mode of legitimating children is abolished.

Stat. 24th March, 1831, p. 86.—§ 1. So much of the article two hundred and seventeen of the Civil Code as abolishes all other modes of legitimation, except that by marriage, be, and the same is, hereby repealed, and that law seventh, title fifteenth, of the fourth Partidas, which was repealed by the said article of the Civil Code, be, and the same is, hereby revived; and that natural fathers or mothers shall have the power to legitimate their natural children, by acts declaratory of their intention, made before a notary and two witnesses: *Provided*, That nothing herein contained shall be so construed as to enable a white parent to legitimate a colored child, nor to prevent a free person of color to legitimate his colored children: *Provided*, The natural children are the issue of parents who might, at the time of conception, have contracted marriage: *And Provided*, That there do not exist, on the part of the parent, legitimating his natural offspring, ascendants, or legitimate descendants.*

ART. 218.—Legitimation may even be extended to deceased children who have left issue, and in that case it enures to the benefit of such issue.

See 11 L. 123.

* Law seventh, title fifteenth, fourth Partidas. 1st Moreau and Carlton's Partidas, p. 551.

In what manner fathers may legitimate their children by written instrument (carta.)

Another way of legitimating natural children is, where a father declares by a writing, executed by his own hand, or which he causes to be executed by a notary public, and attested by three witnesses, that he acknowledges such a one for his son, designating him expressly by name. But in such acknowledgment the father ought not to say he is his natural son; for, if he does, the legitimation will have no effect. Likewise, where a man has several children by a concubine (*amiga*), and he acknowledge one of them only in writing, in the manner above mentioned; by such acknowledgment, the other brothers and sisters will be legitimated, though no mention be made of them, so far as to enable them to inherit the estate of their father, as effectually as the one whose name is mentioned in the writing. And what we say in this and the preceding laws, is to be so understood that they who are therein mentioned as being legitimated, can inherit both the estates of their fathers and other relations; except, however, the child who is legitimated in the manner mentioned in the next law, when he goes in person and offers himself for the service of the Emperor or King: for such a child can inherit the estate of his father only, and not that of his other relations, if they die intestate.

ART. 219.—Children legitimated by a subsequent marriage have the same rights as if they were born during marriage.

See 11 L. 128; 3 R. 441.

SECTION II.—*Of the Acknowledgment of Illegitimate Children.*

ART. 220.—Illegitimate children who have been acknowledged by their father, are called natural children; and those whose father is unknown, are contra-distinguished by the appellation of bastards.

ART. 221.—The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in presence of two witnesses, whenever it shall not have been made in the registering of the birth or baptism of such child.

No other proof of acknowledgment shall be admitted in favor of children of color.

6 L. 560; 11 L. 128; 4 A. 805; 6 A. 158, 161; 12 R. 56, 552; See 14 L. 542.

ART. 222.—Such acknowledgment shall not be made in favor of the children produced by an incestuous or adulterous connection.

12 R. 56.

ART. 223.—The acknowledgment made by the father without the concurrence or consent of the mother, shall have effect only with respect to the father.

ART. 224.—Illegitimate children, though duly acknowledged, cannot claim the rights of legitimate children. The rights of natural children are regulated under the title of *successions*.

See 3 R. 441.

ART. 225.—Every claim, set up by natural children, may be contested by those who have any interest therein.

ART. 226.—Illegitimate children, who have not been legally acknowledged, may be allowed to prove their paternal descent, provided they be free and white.

6 L. 560; 12 R. 56; 6 A. 158, 161; See 14 L. 542.

Free illegitimate children of color, may also be allowed to prove their descent from a father of color only.

ART. 227.—In the case where the proof of natural paternal descent is authorized by the preceding article, the proof may be made in either of the following ways:

1. By all kinds of private writings, in which the father may have acknowledged the bastard as his child, or may have called him so;

2. When the father, either in public or in private, has acknowledged him as his child, or has called him so in conversation, or has caused him to be educated as such;

3. When the mother of the child was known as living in a state of concubinage with the father, and resided as such in his house at the time when the child was conceived.

6 L. 560; 5 A. 250; 6 A. 129, 156; See 4 L. 175.

ART. 228.—The oath of the mother, supported by proof of the cohabitation of the reputed father with her, out of his house, is not sufficient to establish natural paternal descent, if the mother be known as a

woman of dissolute manners, or as having had an unlawful connection with one or more men, other than the man whom she declares to be the father of the child, either before or since the birth of the child.

ART. 229.—In case of rape, whenever the time of such rape shall agree with the time of conception, the ravisher may, at the suit of the parties concerned, be declared to be the father of the child.

ART. 230.—Illegitimate children of every description may make proof of their natural maternal descent, provided the mother be not a married woman.

But the child who will make such proof shall be bound to show that he is identically the same person, as the child whom the mother brought forth.

6 L. 560; 4 A. 305.

ART. 231.—The foundling, whom persons from charity have received and brought up, cannot be claimed by its father and mother, unless they prove that the child was taken from them by force, fraud or accident.

No other relation can claim a foundling without having first obtained the tutorship or curatorship of the foundling, and given security in a sum sufficient for the reimbursement of the expenses which it has incurred.

CHAPTER IV.

OF ADOPTION.

ART. 232.—Adoption which was authorized by the laws heretofore in force, shall be and is hereby abolished.

See 4 L. 423.

CHAPTER V.

OF PATERNAL AUTHORITY.

SEC. I.—*Of the Duties of Parents towards their legitimate Children, and of the Duties of legitimate Children towards their Parents.*

ART. 233.—A child, whatever be his age, owes honor and respect to his father and mother.

ART. 234.—A child remains under the authority of his father and mother until his majority or emancipation.

In case of difference between the parents, the authority of the father prevails.

12 R. 172; 2 A. 293; 6 L. 363.

ART. 235.—As long as the child remains under the authority of his father and mother, he is bound to obey them in every thing which is not contrary to good morals and the laws.

ART. 236.—A child under the age of puberty cannot quit the paternal house without the permission of his father and mother, who have a right to correct him, provided it be done in a reasonable manner.

ART. 237.—The father and mother have a right to appoint tutors to their children, as is directed in the title of *minors*.

ART. 238.—Fathers and mothers may, during their life, delegate a part of their authority to teachers, schoolmasters and others to whom they intrust their children for their education, such as the power of restraint and correction, so far as may be necessary to answer the purposes for which they employ them.

They have also the right to bind their children as apprentices.

ART. 239.—Fathers and mothers shall have, during marriage, the enjoyment of the estate of their children, until their majority or emancipation.

10 L. 92; 12 R. 172; 3 A. 186

ART. 240.—The obligations resulting from this enjoyment shall be:

1. The same obligations to which usufructuaries are subjected;
2. To support, to maintain and to educate their children according to their situation in life.

12 R. 172; 3 A. 294.

ART. 241.—The usufruct, in case of separation from bed and board, shall take place *in toto*, in favor of either father or mother, who shall have sued for such separation, and shall be subjected to the conditions prescribed in the preceding article.

The words "*sued for*" should be "*obtained*." See French text.

ART. 242.—This usufruct shall not extend to any estate, which the children may acquire by their own labor and industry, nor to such estate as is given or left them under the express condition that the father and mother shall not enjoy such usufruct.

ART. 243.—Fathers and mothers, by the very act of marriage, contract together the obligation of supporting, maintaining, and educating their children.

3 A. 186.

ART. 244.—A child has no right to sue either his father or mother for the purpose of obtaining a marriage settlement or other advancement.

ART. 245.—Children are bound to maintain their father and mother and other ascendants, who are in need; and the relatives in the direct ascending line are likewise bound to maintain their needy descendants. this obligation being reciprocal.

They are also bound to render reciprocally all the services which their situation can require, if they should become insane.

12 R. 355; 3 A. 186.

ART. 246.—By *alimony* we understand what is necessary for the nourishment, lodging and support of the person who claims it.

It includes the education, when the person to whom the alimony is due is a minor.

12 R. 355.

ART. 247.—Alimony shall be granted in proportion to the wants of the person requiring it, and the circumstances of those who are to pay it.

12 R. 355.

ART. 248.—When the person who gives or receives alimony is replaced in such a situation that the one can no longer give, or that the other is no longer in need of it, the circumstances of either party are

materially changed; then the discharge from or reduction of the alimony may be sued for and granted.

ART. 249.—If the person, whose duty it is to furnish alimony, shall prove that he is unable to pay the same, the judge may, after examining into the case, order that such person shall receive in his house, and there support and maintain, the person to whom he owes alimony.

ART. 250.—The judge shall pronounce likewise whether the father or mother who may offer to receive, support and maintain the child, to whom he or she may owe alimony, in his or her house, shall be dispensed in that case from the obligation of paying for it elsewhere.

9 M. 643.

ART. 251.—Fathers and mothers owe protection to their children, and of course they may, as long as their children are under their authority, appear for them in court in every kind of civil suit, in which they may be interested, and they may likewise accept any donation made to them.

ART. 252.—Fathers and mothers may justify themselves in an action begun against them for assault and battery, if they have acted in defence of the persons of their children.

ART. 253.—Fathers and mothers are answerable for the offences or quasi-offences committed by their children, in the cases prescribed under the title of *quasi-contracts and quasi-crimes or offences*.

SECTION II.—Of the Duties of Parents towards their Natural Children, and of the Duties of Natural Children towards their Parents.

ART. 254.—Bastards, generally speaking, belong to no family, and have no relations; accordingly they are not submitted to the paternal authority, even when they have been legally acknowledged.

7 N. S. 387; See 14 L. 542.

ART. 255.—Nevertheless nature and humanity establish certain reciprocal duties between fathers and mothers, and their natural children.

ART. 256.—Fathers and mothers owe alimony to their natural children, when they are in need;

And natural children owe likewise alimony to their father and mother, if they are in need, and if they themselves have the means of providing it.

ART. 257.—Natural children have a right to claim this alimony, not only from their father and mother, but even from their heirs after their death.

See 3 R. 441.

ART. 258.—But in order that they may have a right to sue for this alimony, they must:

1. Have been legally acknowledged by both their father and mother, or by either of them from whom they claim alimony; or they must have been declared their natural children by a judgment duly pronounced, in cases in which they may be admitted to prove their paternal or maternal descent;

2. They must prove in a satisfactory manner that they stand absolutely in need of such alimony for their support.

6 A. 159; See 14 L. 542.

ART. 259.—Although alimony must be proportioned generally with the wants of the person claiming and with the resources of the person owing the same, nevertheless that allowed to the natural children of color shall never exceed what is absolutely necessary to ensure them their board and lodging, and to enable them to learn to read and write, and a trade.

ART. 260.—The obligation of giving such alimony ceases, when the natural child is able to earn his subsistence, by labor, or whenever his father or mother have caused him to be instructed in an art, trade or profession fit to procure him a sufficient livelihood, unless some continual sickness or infirmity prevents such child from working for his subsistence.

This debt of alimony ceases likewise to be due from the estate of the natural father or mother, whenever either of them has provided during his or her life a sufficient maintenance for his or her natural child, or have made to him donations or other advantages which may be sufficient for that purpose.

5 A. 260.

ART. 261.—The other rules established respecting alimony to be granted to legitimate children take place likewise with respect to natural children, except so far as they may be contrary to the foregoing provisions.

ART. 262.—Alimony is due to bastards, though they be adulterous and incestuous, by the mother and her ascendants.

TITLE VIII.

OF MINORS, OF THEIR TUTORSHIP, CURATORSHIP AND EMANCIPATION.

CHAPTER I.

OF TUTORSHIP.

SECTION I.—*General Dispositions.*

ART. 263.—The minor, that is, the male who has not arrived to the full age of fourteen years, and the female who has not arrived to the full age of twelve years, are both, as to their person and their estate, placed under the authority of a tutor.

Above that age, and until their majority or emancipation, they are placed under the authority of a curator.

After the word "*minor*" the words "*under the age of puberty*" should be inserted.
See French text.

ART. 264.—There are four sorts of tutorships:

Tutorship by nature;

Tutorship by will;

Tutorship by the effect of the law;

Tutorship by the appointment of the judge.

ART. 265.—Tutorship by nature takes place of right; every other kind of tutorship must either be confirmed, or given by the judge.

12 R. 636; See 7 L. 539.

ART. 266.—For every sort of tutorship the tutor is accountable.

SECTION II.—Of Tutorship by Nature.

ART. 267.—The father is, during the marriage, administrator of the estate of his minor children.

He is accountable both for the property and revenues of the estates, the use of which he is not entitled to by law, and for the property only of the estates, the usufruct of which the law gives him.

This administration ceases at the time of the majority or emancipation of the children.

12 R. 172; 3 A. 610; See 6 L. 263.

ART. 268.—After the dissolution of marriage by the death of either husband or wife, the tutorship of the minor children belongs of right to the surviving mother or father;

This is what is called tutorship by nature.

7 L. 539; 3 A. 582; See 7 N. S. 387; 9 R. 198; 12 R. 335, 636.

ART. 269.—Tutors by nature are bound to cause an inventory to be made, and an under tutor to be appointed, but they are not compelled to give security.

ART. 270.—If at the time of the death of the husband, the wife shall be pregnant, a curator shall be appointed to the unborn child; and at the birth of that posthumous child, such curator shall be of right the under tutor.

ART. 271.—The mother is not compelled to accept the tutorship of her minor children, but in case she refuses, she shall be bound to fulfil the duties of a tutor, until she has caused a tutor to be appointed.

The mother, who refuses the tutorship of her children, retains the superintendence of them, and the care of their education. The tutor, in such a case, is merely intrusted with what concerns the administration of their property.

7 L. 539, 271; See 9 R. 193.

ART. 272.—If the mother, who is tutrix to her children, wishes to marry again, she must, previous to the celebration of the marriage, apply to the judge in order to have a meeting of the family called for the purpose of deciding whether she shall remain tutrix.

If she shall neglect to call such a meeting, she shall be *ipso facto* deprived of the tutorship, and together with her husband shall be answerable *in solidum* for all the consequences of the mal-administration of the tutorship unduly kept by her, and the estate of the husband shall be tacitly mortgaged as a security for that responsibility from the day of the celebration of the last marriage.

2 A. 401; 10 L. 452.

ART. 273.—When the meeting of the family shall retain the mother in the tutorship, her second husband becomes of necessity the co-tutor,

who for the administration of the property, subsequently to his marriage, becomes bound jointly with his wife.

See 9 R. 193.

ART. 274.—The father is of right the tutor of his natural child acknowledged by him. The mother is of right the tutrix of her natural child not acknowledged by the father.

The natural child, acknowledged by both, has for tutor, first the father, in default of him, the mother.

SECTION III.—*Of the Tutorship by Will.*

ART. 275.—The right of appointing a tutor, whether a relation or a stranger, belongs exclusively to the surviving father or mother.

This tutorship is called testamentary tutorship, because generally it is given by testament, but it may likewise be given by any declaration by the surviving father or mother, executed before a notary and two witnesses.

ART. 276.—The mother, who is married again, and who is not maintained in the tutorship of the children of her preceding marriage or marriages, has no right to appoint a tutor to them.

ART. 277.—The tutor by will is not compelled to accept the tutorship to which he is appointed by the father or mother, if there are relations of the minors entitled by law to the tutorship in preference to him.

But if he refuses the tutorship, he loses in that case all the legacies and other advantages, which the person who appointed him may have made in his favor under a persuasion that he would accept this trust.

ART. 278.—The judge may refuse to confirm the tutorship given by the surviving father or mother, if he deems it conducive to the interest of the minor, provided it be by and with the advice of the assembly of the family.

And in this case a tutor is appointed to the minor agreeably to the rules hereafter prescribed.

ART. 279.—The father or mother of the natural child acknowledged by either of them, can choose a tutor for him, whose appointment, to be valid, must be approved by the judge.

ART. 280.—If the parent, who died last, has appointed several tutors to the children, the person first mentioned shall be alone charged with the tutorship, and the second shall not be called to it, except in case of the death, absence, incapacity or displacing of the first, and in like manner as to the others in succession.

SECTION IV.—*Of the Tutorship by the Effect of the Law.*

ART. 281.—When a tutor has not been appointed to the minor by the surviving father or mother, or if such tutor having been appointed, has not been confirmed or has been excused, then the judge ought to appoint to the tutarship the nearest ascendant in the direct line of the minor.

ART. 282.—In case there shall be more than one ascendant in the same degree, in the direct line, but of different sexes, the tutorship shall be given to the male.

3 R. 390.

ART. 283.—In case there shall be more than one ascendant in the same degree, in the direct line, and of the same sex, the judge shall appoint one of them as tutor by and with the advice of the meeting of the family.

3 R. 390.

ART. 284.—The grandmother of the minor is the only woman who has a right to claim the tutorship by the effect of the law, but she is not compelled to accept it.

ART. 285.—In case the minor has no ascendant in the direct line, the legal tutorship shall be given to the nearest of kin in the collateral line, who comes immediately after the presumptive heir or heirs of the minor.

And if there are two or more relations in the same degree after the presumptive heir or heirs of the minor, the judge shall appoint one of them by and with the advice of the meeting of the family.

ART. 286.—The relation even in the fourth degree inclusively, who refuses to take charge of the tutorship, is responsible to the minor for all losses and damages which may result therefrom.

ART. 287.—Under the name *relation* are not included connections by affinity.

SEC. V.—Of *Dative Tutorship*.

ART. 288.—When a minor is an orphan, and has no tutor appointed by his father or mother, nor any relations who may claim the tutorship by the effect of the law, or when the tutor appointed in some of the modes above expressed is liable to be excluded according to the rules hereafter established, or is excused legally, in such cases the judge shall appoint a tutor to the minor, by and with the advice of the meeting of the family.

Stat. 10th March, 1834, p. 113.—§ 4. Whenever it shall occur that no one will take upon himself the tutorship of a minor or minors, and comply with the existing laws by giving the required security for the tutorship of minors, it shall be the duty of the parish judge to summon a family meeting according to the provisions of this act, and with its advice to nominate one discreet and responsible person to be tutor, and another to be under tutor, who shall in all respects comply with the existing laws in relation to tutors, except that of giving security for his administration.

3 R. 390.

ART. 289.—The appointment or confirmation of tutors must be made by the judge of the parish where the minor has his domicile, if he has a domicile in the State, or if he has no domicile in the State, by the judge of the parish where the principal estate of the minor is situated, saving to the parties the right of an appeal within thirty days from the judgment decreeing the nomination or confirmation, after which delay no appeal shall be admitted.

ART. 290.—In every case where it is necessary to appoint a tutor to a minor, all those of his relations who reside within the parish of the judge, who is to appoint him, are bound to apply to such judge, in order that a tutor be appointed to the minor at farthest within ten days after the event which makes such appointment necessary.

3 R. 303.

ART. 291.—Minor relations and women who are excluded from the tutorship are not included in the provisions contained in the preceding article.

ART. 292.—Relations who have neglected to cause a tutor to be appointed are responsible for the damages which the minor may have suffered.

This responsibility is enforced against relations in the order according to which they are called to the inheritance of the minor, so that they are responsible only in case of the insolvency of him or them who precede them in that order, and this responsibility is not *in solidum* between relations who have a right to the inheritance in the same degree.

3 R. 303.

ART. 293.—The action which results from this responsibility cannot be maintained by the tutor, but within the year of his appointment.

If the tutor neglects to bring his action within that time, he is answerable for such neglect to the minor.

ART. 294.—Whenever a circumstance occurs, which makes the appointment of a tutor necessary, information thereof to the competent judge may be given by any one.

ART. 295.—When the minor is without a tutor, any person who has a claim against him may apply to the competent judge to request that a tutor *ad hoc* be appointed to him, which tutor shall not be bound to give any security, but shall take an oath before the court who has appointed him, to defend the interests of the minor according to the best of his knowledge.

3 L. 433.

ART. 296.—The judge can appoint a tutor to a foundling or a child abandoned, giving the preference always to the person protecting it.

ART. 297.—The tutor administers and acts as such from the day of his appointment, if such appointment took place when he was present; otherwise, from the day on which notice was given to him.

ART. 298.—If the tutor shall die or absent himself from the State after his appointment, another tutor shall be appointed in his stead by the judge, in the form before prescribed.

5 N. S. 379; 3 L. 433; 9 L. 567; See C. C. 1092, post.

ART. 299.—Tutorship is a personal trust, which does not descend to the heirs of the tutor. Nevertheless if the heirs of the tutor be of full age, they are answerable for the administration, and are responsible for the same, until another tutor or curator shall have been appointed.

SEC. VI.—Of the Under-Tutor.

ART. 300.—In every tutorship, there shall be an under-tutor, whom

it shall be the duty of the judge to appoint at the time the letters of tutorship are certified for the tutor.

2 R. 418.

ART. 301.—It is the duty of the under-tutor to act for the minor, whenever the interest of the minor is in opposition to the interest of the tutor.

1 N. S. 462; 2 L. 142; 10 L. 319; 12 L. 577; 1 R. 111; 6 R. 51; 4 A. 77.

ART. 302.—The under-tutor cannot be a member of family meetings, but he must be present for the purpose of advising, and when he is of opinion that the determination of the meeting is injurious to the interests of the minor, it is his duty to oppose the homologation of the proceedings.

4 L. 383; 2 A. 941; See 10 L. 319.

ART. 303.—The tutorship does not devolve on the under-tutor, when it is vacant.

But when it becomes necessary to appoint another tutor, it is the duty of the under-tutor, under his responsibility, to cause such appointment to be made.

2 A. 941.

ART. 304.—The duties of the under-tutor are at an end at the same time with the tutorship.

SEC. VII.—*Of Family Meetings.*

ART. 305.—Family meetings, in all cases in which they are required by law, for the interest of minors or of other persons, must be composed of at least five relations, or in default of relations, friends of him on whose interests they are called upon to deliberate.

These relations or friends must be selected from among those domiciliated in the parish in which the meeting is held.

Stat. 1st April, 1826, p. 162.—§ 4. The article three hundred and five of the Civil Code be and is hereby amended as follows, to wit: by adding, at the end of the second paragraph of the said article, the following words: or in a neighboring parish, provided it be not at a distance exceeding thirty miles.

Stat. 25th March, 1828, p. 160.—§ 24. Whenever any person shall have contradictory interests with those of one or more minors in the settlement of an estate, in the partition and sale of an undivided property, or in any business in which a family meeting shall be necessary to pronounce on the interest of minors; it shall not be lawful for such person to be a member of said family meeting, although he be one of the nearest relations.

2 L. 534; 11 R. 67; 2 A. 941.

ART. 306.—The relations shall be selected according to their proximity, beginning with the nearest.

The relation shall be preferred to the connection of the same degree, and among relations of the same degree, the eldest shall be preferred.

See 6 N. S. 659; See amendment to Art. 305, *Stat. 25th March, 1828*, § 24.

ART. 307.—The appointment of the members of the family meeting shall be made by the judge.

ART. 308.—The family meeting shall be held before a justice of peace, or notary public appointed by the judge for the purpose. It shall be called for a fixed day and hour, by citations delivered at least three days before the day appointed for the meeting.

12 R. 67.

ART. 309.—The members of the family meeting, before commencing their deliberations, shall take an oath before the officer before whom the meeting is held, to give their advice according to the best of their knowledge, touching the interests of the person on which they are called upon to deliberate.

ART. 310.—Whenever the officer, before whom the family meeting is to be held, shall think proper to adjourn it in consequence of the absence of a member, or to prorogue it for want of time to terminate the business in one day, he can order the adjournment or prorogation.

ART. 311.—The officer, before whom the family meeting is held, must make a particular process verbal of the deliberations, cause the members of the family to sign it, if they know how to sign, sign it himself, and deliver a copy to the parties, that they may have it homologated.

Stat. 10th March, 1834, p. 112.—§ 1. If any relation of a minor heir or heirs, after having been legally summoned to compose a family meeting of such minor heir or heirs, shall fail to attend according to the summons, he shall be liable to a fine at the discretion of the court issuing the summons, not exceeding twenty dollars, to be applied by the court towards defraying the expenses of convoking and holding such family meetings; which fines shall be collected in the same manner as are collected the fines imposed on witnesses failing to attend after having been regularly summoned.

§ 2. If any relation or relations of a minor heir or heirs, after having been legally summoned to compose a family meeting, convoked to deliberate and advise concerning the interests of such minor heir or heirs, shall neglect to attend according to the summons, the judge of the court ordering the family meeting to be convoked, shall have power to appoint friends to compose such a family as in default of relations.

§ 3. The notices delivered by the notary, in whose office the family meeting is to be held, to the members who are to compose said meeting, be, and the same are hereby considered as having the same effect, legally, as the summons served by the Sheriff.

SEC. VIII.—*Of the Causes which dispense or excuse from the Tutorship.*

ART. 312.—The following persons are dispensed or excused from the tutorship by the privilege of their offices or functions:

1. The governor and the secretary of State.
2. The judges of the different courts of this State, and the officers of the same.
3. The mayor of the city of New-Orleans.
4. The collector of the customs.

5. The officers and soldiers attached to the regular troops, whether on land or sea service, employed, and in actual service in this State, and all the other officers who are intrusted in this State with any mission from the government, as long as they are employed.

6. Preceptors and other persons keeping public schools, as long as they remain in the useful and actual exercise of their profession.

7. Ministers of the gospel.

ART. 313.—The persons mentioned in the preceding article, who have accepted a tutorship posterior to their being invested with the offices, engaged in the service, or intrusted with the mission which dispense from it, shall not be admitted to be excused on that account.

ART. 314.—Those, on the contrary, who shall have been invested with offices, who shall have engaged in the service, or shall have been intrusted with commissions, posterior to their acceptance and administration of a tutorship, may, if they do not choose to continue to act as tutor, be excused from the tutorship, and apply for the appointment of another tutor to supply their place.

ART. 315.—No person who is neither a relation nor a connection by affinity of the minor, or who is not related or connected with him beyond the fourth degree, can be compelled to accept the tutorship.

ART. 316.—Every person who has attained the age of sixty-five years may refuse to be a tutor.

The person who shall have been appointed prior to that age may be excused from the tutorship at the age of seventy years.

ART. 317.—Every person affected with a serious infirmity may be excused from the tutorship, if this infirmity be of such nature as to render him incapable of transacting his own business.

He may even be discharged from the tutorship, if such infirmity has befallen him after his appointment.

ART. 318.—The person who is appointed to two tutorships has a legal excuse for not accepting a third.

He who, being a husband or a father, shall have already been appointed to one tutorship, shall not be compelled to accept a second tutorship, except it be that of his own children.

ART. 319.—The tutor who has excuses to offer against his appointment, must propose them to the judge who has appointed him, within ten days after he has been acquainted with his appointment, or after the same shall have been notified to him, which period shall be increased one day for every four leagues' distance from his residence to the place where his appointment was made, and after this delay he shall no longer be admitted to offer any excuse, unless he has sufficient reason to account for such delay.

See 2 R. 418.

ART. 320.—During the time of the pendency of the litigation relative to the validity of his excuses, the tutor who is appointed shall be bound provisionally to administer as such, until he shall have been regularly discharged.

11 R. 503.

ART. 321.—The causes herein expressed, or any other, cannot excuse the father from the obligation of accepting the tutorship of his children.

SECTION IX.—*Of the Incapacity for, the Exclusion from, and Deprivation of, the Tutorship.*

ART. 322.—The following persons cannot be tutors, to wit :

1. Slaves.
2. Minors, except the father and mother.
3. Women, except the mother and grandmother.

2 A. 623.

4. Idiots and lunatics.

5. Those whose infirmities prevent them from managing their own affairs.

6. Those whom the penal law declares incapable of holding a civil office.

7. Those who are themselves, or whose father or mother are parties to a lawsuit, on the result of which the condition of the minor, or part of his fortune, may depend.

8. Those who are debtors to the minor, unless they discharge the debt, prior to their appointment.

ART. 323.—The following persons are excluded from the tutorship, and are even liable to be removed from it, if in the actual exercise of it :

1. Persons of a conduct notoriously bad.

2. Those whose management shall manifest either incapacity or dishonesty.

3. Those who shall have neglected to cause inventory to be made of the minor's property, within the time prescribed by law.

See 10 L. 82 ; 13 L. 1.

ART. 324.—The tutor who becomes insolvent after his appointment, is to be removed from the tutorship.

3 A. 362 ; See 4 N. S. 379 ; 5 N. S. 21.

ART. 325.—All the causes of incapacity, exclusion, and removal, mentioned above, apply likewise to the under-tutor.

2 A. 418.

ART. 326.—No cause of exclusion or removal is applicable to the father, except that of unfaithfulness of his administration, and of notoriously bad conduct.

2 A. 293, 750.

SECTION X.—*Of the Administration of the Tutor.*

ART. 327.—The tutor shall have the care of the person of the minor, and shall represent him in all civil acts.

He shall administer his estate as a prudent administrator would do, and shall be responsible for all damages resulting from a bad administration.

He cannot either personally, or by means of a third person, purchase, lease or hire the property of the minor, or accept the assignment of any right or claim against his ward.

Stat. 1st April, 1843, p. 97.—§ 1. Hereafter any person who has been or shall be appointed tutor or guardian of any minor residing out of the State of Louisiana, but within the United States, and who has qualified as tutor or guardian of said minor, in conformity with

the laws of the State or country where said appointment is made, shall be entitled to sue for and recover any property, rights, or credits, belonging to said minor within this State, upon his producing satisfactory evidence of his appointment as aforesaid, without being under the necessity of qualifying as tutor of said minor according to the laws of Louisiana.

§ 2. All laws and parts of laws contrary to this act, be and the same are hereby repealed: *Provided* that nothing in this act shall authorize any such tutor or guardian to take possession of, or remove from the State, the property of any minor or estate, unless satisfactory proof be furnished to the court that the debts of the succession are paid, or that none exist in the State, which proof shall consist in public advertisements in the newspapers, for at least thirty days, in the manner prescribed by law for the rendering of accounts by tutors and administrators.

6 L. 203, 500; 15 L. 69; 17 L. 104; 7 R. 24; 10 R. 457; 12 R. 41; 2 A. 316, 462; 3 A. 611, 582; See 10 L. 272, 319; 1 R. 407; 9 R. 133; 11 R. 67; 5 L. 20.

ART. 328.—Both the tutor and the under-tutor shall, prior to their entering upon the exercise of their duties, take an oath before the judge, that they will well and faithfully fulfil their trust.

S M. 442; 5 N. S. 624; 8 N. S. 581; 6 L. 351; 2 N. S. 612; 4 R. 290; 11 R. 503; 3 A. 502, 611.

ART. 329.—It is the duty of the tutor to cause a true and faithful inventory to be made of the movable and immovable property, credits, deeds, and papers belonging to the minor, and to cause the said property to be valued by two appraisers, appointed by the judge and duly sworn.

This inventory shall be begun at farthest within ten days after the appointment of the tutor, by the judge himself, or by any notary public authorized to that effect by him.

6 A. 64; 5 L. 434; 8 M. 442; 1 N. S. 462; 2 N. S. 73.

ART. 330.—Every tutor, except the father and mother, shall give to the judge, who either appointed or confirmed him, good and sufficient security for the fidelity of his administration.

This security must be in amount equal to the amount of the credits, money, and other movable effects stated in the inventory, and such other sum as the judge shall deem sufficient to cover any loss or damage which the tutor may occasion to the minor by his bad administration.

This security may be increased or diminished on the demand of the under-tutor or any relation of the minor, as the disposable funds of the estate may increase or diminish.

17 L. 104; 1 R. 407; 7 R. 24; 9 R. 133; 11 R. 67; 2 A. 462; 6 A. 64; See 10 R. 457; 12 R. 41, 323.

ART. 331.—The tutor may be exempted from furnishing this security, if he prove that he possesses, within the State, real property, unencumbered with mortgages or other liens, of the value of double the sum fixed for the security, or if he give a special mortgage on immovable unencumbered property, equal in value to the amount of the security required.

Stat. 11, March, 1830, p. 46.—§ 1. From and after the passage of this act, any surviving father or mother who shall have heretofore become, or shall hereafter become, the natural tutor or tutrix, curator or curatrix of their minor child or children, may and they are hereby

permitted to give a special mortgage on immovable property, not slaves, for the security of the rights and property of their said children and the faithful discharge of their functions as tutor or tutrix, curator or cutratrix aforesaid: *Provided* that a meeting of the family of the said minor or minors, duly called according to law, on the petition of the said surviving father or mother to that effect, addressed to the court of probates of the proper parish, shall declare that the property offered to be so specially mortgaged is in the opinion of said family meeting of sufficient value to secure the rights of said child or children in capital and interest, which mortgage shall be executed in the same manner that mortgages of the like nature are now executed by curators *ad bona* of minors. And from and after the execution of the said special mortgage by the said father or mother, natural tutor or tutrix as aforesaid, all the remaining property of the said father or mother, acquired or to be acquired, shall be completely discharged from all legal, tacit, or any other description of mortgages, hypothecation, or lien whatever arising from said tutorship.

§ 2. In case of an adjudication made under the 338th article of the Civil Code, or any other law authorizing similar adjudications, a special mortgage may be given by the father or mother on real property not slaves, to secure the rights of the minors; and such a special mortgage shall have the effect of annulling the mortgage arising from such adjudication.

§ 3. A special mortgage given in favor of a minor or minors may be changed after a family meeting, called and held according to law, shall have recommended such change, and after the deliberations of said family meeting shall have been duly homologated; provided that the title of the property proposed to be mortgaged shall be laid before the said family meeting, and shall be carefully inspected by the under-tutor and the judge; and provided that all the other provisions contained in this act shall be fully complied with.

§ 4. In all cases of application made by a father or mother to give a special mortgage, the person applying shall be bound to present at the family meeting a certificate from the register of mortgages, showing what mortgages if any exist on the property offered to be specially mortgaged; the under-tutor shall be called, and it shall be his duty to be present at the deliberations of the family meeting, and when not fully satisfied with the value or kind of property offered to be mortgaged, with the validity of the titles of said property, or with the deliberations of the family meeting, he shall refuse his approbation to said deliberations; and any under-tutor neglecting to perform the duties hereby prescribed, or neglecting to ascertain the real value of the property offered to be mortgaged, shall be responsible to the minors for any loss they may experience from such neglect; and it shall also be the duty of the under-tutor, whenever the value of the property specially mortgaged shall have diminished so as to endanger the interest of the minors, to require an additional mortgage.

§ 5. Whenever an under-tutor shall refuse to approve of the deliberations of a family meeting, or object to their homologation, the

court shall decide whether the opposition is well founded, and if unfounded, the opposition shall be overruled, and the deliberations homologated as if no opposition had taken place: Provided that when the court shall decide that the opposition of the under-tutor is unfounded, and shall homologate the deliberations of the family meeting, the under-tutor shall be exonerated from the personal responsibility which is imposed upon him by the preceding section.

§ 6. All costs occasioned by the demand to give a special mortgage shall be paid by the persons making the application.

§ 7. It is hereby made the duty of all public officers before whom family meetings shall be called, to read this act to them and to the under-tutors, and any officer failing to perform this duty shall be responsible for any loss arising from such neglect either to the under-tutor or to the minor or minors.

§ 8. In all cases where special mortgages shall be given by curators or tutors in lieu of the legal mortgage existing in such cases, as recognized by law, it shall be the duty of the judge receiving such special mortgage to cause the property to be mortgaged to be appraised by experts, in the same manner as is provided when adjudications of the property of minors are made to their surviving father or mother, and the judge shall in no case accept the said mortgage unless the value of the property so appraised shall exceed, exclusive of all prior liens, privileges, or mortgages, the amount of the debts or rights of the minors intended to be secured by the said special mortgage by at least twenty-five per cent. in addition to the amount of the said debts or rights, to be ascertained by a previous liquidation to be made according to law in the office of the judge having jurisdiction of the said matter, and including all interest which will probably accrue.

§ 10. The grandfather or grandmother, when the tutorship shall have devolved or may devolve upon either of them by operation of law, shall be entitled to the benefit of the provisions in favor of natural tutors or tutrix, contained in the first section of this act.

1 L. 343; 2 A. 402.

ART. 332.—The letters of tutorship shall not be delivered to the tutor until he shall have furnished security of one of the kinds before described.

Until they shall have been delivered to him, he shall not interfere with the administration of the property of the minor, except for the purpose of preserving it, in cases which admit of no delay.

2 A. 402; 4 A. 123.

ART. 333.—Within a month after the closing of the inventory, the tutor must cause the movable effects of the minor to be sold, unless he be authorized by the judge to preserve them in kind, in whole or in part, in consequence of the time approaching for the emancipation of the minor, or for any other sufficient reason; in which case the tutor shall return to the minor the estimated value of those movables, which he cannot restore in kind, or which he has suffered to deteriorate through want of care.

3 A. 611; 12 R. 385.

ART. 334.—The immovables and slaves of the minor cannot be alienated or mortgaged, unless on the representation of the tutor, that

it is for the interest of the minor that these objects or a part of them should be sold or mortgaged, a meeting of the family duly assembled shall declare that the sale or mortgage is of absolute necessity, or of evident advantage to the minor.

10 M. 225, 726; 1 N. S. 605, 625; 4 L. 269; 3 R. 262; 11 R. 508; See 10 L. 272, 319, 592; 19 L. 441; 8 M. 532; 11 M. 717; 10 R. 457; 8 L. 412; 15 L. 436; 17 L. 500.

ART. 335.—In case the meeting of the family shall consider the sale or mortgage to be advantageous to the minor, it shall set forth the reasons of its determination, in order that the judge may decide whether he ought to cause it to be homologated or not, and shall also fix the terms of credit on which the property shall be sold, and the other conditions of the sale, if the case requires it.

3 R. 262; 11 R. 508; 4 A. 520; See 4 L. 477; 7 L. 312; 10 L. 272, 319.

ART. 336.—The sale of the property of the minor shall be authorized by the judge, and made at public auction, after having been duly advertised in English and French, during ten days for movables, and thirty days for immovables and slaves, either by papers posted up at the usual places, if the sale is made out of the parish of New-Orleans, or by advertisements inserted in at least two newspapers which are printed in the city of New-Orleans, if the sale is made within the limits of that parish.

In those parishes in which a newspaper is published, the sale must be advertised in the newspapers, besides the publication by papers posted up, as herein prescribed.

17 L. 500; 3 R. 262; See 4 L. 383; 7 L. 312; 10 L. 538.

ART. 337.—The minor's property cannot be sold for less than the amount of its appraised value mentioned in the inventory, and if there is no offer to that amount, it shall be again offered for sale at public auction, with the same formalities which are above directed, until the price of its appraisement may be obtained, reserving to the judge, with the advice of the meeting of the family, the power of extending the terms of credit granted, and of giving such other facilities as may procure a prompt and advantageous sale of the property, and of ordering other appraisement or appraisements, in case he shall be satisfied that the sale cannot be effected at the rate of appraisement already made.

7 L. 312; 8 L. 177, 321; 13 L. 84; 11 R. 508; 9 M. 461.

ART. 338.—Whenever the father or mother of a minor has property in common with him, they each can cause it to be adjudicated to them, either in whole or in part, at the price of an estimation made by experts appointed and sworn by the judge, after a family meeting, duly assembled, shall have declared that the adjudication is for the interest of the minor, and the under-tutor shall have given his consent thereto; and in this case the property so adjudicated shall remain specially mortgaged for the security of the payment of the price of the adjudication and the interest thereof.

Stat. 17th March, 1826, p. 86.—§ 1. Whenever any of the children of a person to whom property acquired during the marriage of said person and his or her deceased husband or wife has been adjudicated under the second section of the act entitled "An act to amend the ninth section of the eighth title of the first book of the Digest, respecting tutors and curators of minors, and containing additional provisions

to the same," or under the article 338 of the Civil Code now in force in this State, shall have attained the age of majority, the property so adjudicated, or any part thereof as may be necessary, may be sold by public auction, to pay to the said children their share in the price at which the same shall have been adjudicated; and that in case after such a sale the balance of the said property remaining in the hands of the father or mother shall be deemed insufficient to cover the claim of the other child or children who are still minors, it shall be the duty of the father or mother to whom the aforesaid property has been adjudicated, to furnish and give upon some other valuable property an additional special mortgage, in order completely to secure the claim of said minor children; provided that the sale authorized by this act be made and the additional mortgage accepted after having obtained the consent of the family meeting; which family meeting, in case they are of opinion that the father or mother to whom the property was adjudicated as aforesaid, cannot pay those of his or her children who have attained the age of majority, without selling the said property or any part thereof, shall have power to give their said consent and raise the special mortgage existing in favor of the said minor children upon the property thus to be sold, and provided also, that in case of insufficiency of the balance of the said property as above-mentioned, the said mortgage shall not be raised until after the additional one above required be given, accepted, and duly recorded.

§ 2. Whenever an application shall be made by children having attained their age of majority, to be paid their shares in the price of the adjudication of the property aforesaid, if the family meeting be of opinion that said property is insufficient to cover the claims of all the children in principal and interest, and the father or mother to whom the property has been adjudicated is not possessed of other real property sufficient to supply by a special mortgage thereon the deficiency of the property adjudicated, the whole of the said adjudicated property shall be sold, and a division of the net proceeds thereof made among all the children *pro rata*; and after the said division shall have been made, the children who shall have attained their age of majority shall be paid their respective shares accordingly, and the shares accruing to the then still minor children shall be placed in the hands of their tutor or curator, to be administered according to the rules and principles governing the administration of the property of minors by their tutors or curators.

See amendment to Art. 331; § 2; 1 N. S. 623; 1 R. 373; 2 A. 162; 5 A. 121; 13 L. 173; See 10 L. 319.

ART. 339.—The prohibition of alienating the immovables and slaves of a minor does not extend to the case in which a judgment is to be executed against him, or of a licitation made at the instance of a coheir, or other coproprietor.

7 L. 312; 8 L. 177; 13 L. 159.

ART. 340.—If, among the property of the minor, there be any which it may be necessary to work as a plantation or a manufactory, the tutor shall not be bound to administer them, or to cause them to be adminis-

tered, but he shall be permitted to let them for an annual rent proportioned to their value.

The adjudication of the lease must be made at public auction.

ART. 341.—The tutor shall be bound to invest, in the name of the minor, the revenues which exceed the expenses of his ward, whenever they amount to five hundred dollars. In default thereof, he shall be bound to pay on such excess the highest conventional interest allowed by law.

The investment of the funds of the minor must be made by public act, and secured by mortgage.

Stat. 19th February, 1825, p. 198.—§ 1. Instead of the highest conventional interest which tutors of minors are by the 341st article of the Civil Code of the State made liable to pay to their pupils, on the funds which they have failed to place at interest for their use, the said tutors will be accountable only for legal interest; and that when said Code will be promulgated, the said article 341 will not be in force, except so far as it is not contrary to the provisions of this act.

5 L. 490; 9 R. 236; 3 A. 611.

ART. 342.—The tutor may retain as a commission for his care and labor, ten per cent. on the annual amount of the revenues of the property committed to his charge.

4 L. 134; 3 A. 323,* 362.

ART. 343.—The expenses for the support and education of the minor ought to be so regulated, that nothing decent or necessary shall be wanting to him, according to his condition and his fortune. They ought never to exceed his revenues. But if the revenues are not sufficient to procure him an education, the tutor must cause a meeting of the family to be assembled in order to deliberate whether it be for the advantage of the minor that something should be taken from his capital, in order to insure to him the advantage of a liberal education.

In case also that the revenue of the minor should be evidently insufficient to procure him subsistence, the tutor, by the advice of the family meeting, may be authorized to take from the capital in order to supply his wants.

12 R. 385; 5 L. 488; See 10 L. 272; 3 R. 283.

ART. 344.—The tutor administers by himself alone; all the deeds are made by him and in his name, without the concurrence of the minor.

He can, on his own responsibility, act by an attorney in fact, in places distant from his residence.

15 L. 69; See 3 R. 283.

ART. 345.—The tutor cannot, without an authority from the judge, by and with the advice of a family meeting, accept or refuse an inheritance which has descended to the minor.

9 R. 78; 8 L. 321.

ART. 346.—The acceptance of an inheritance, which has accrued to a minor, can be made in no other way than with the benefit of an inventory.

17 L. 500; 9 R. 183, 167; See 3 R. 29.

ART. 347.—The inheritance which has been refused by the tutor authorized by the judge, may be resumed or accepted by the tutor by a similar authority, or by the minor when arrived at the age of majority,

in case such inheritance shall not have been accepted by any other person.

But the inheritance must be taken such as it is at the time of claiming the same, and the claimant shall have no right to contest any sales or other acts, which may have been legally made, during the vacancy of the inheritance.

10 L. 508.

ART. 348.—The tutor cannot borrow for the minor, purchase for him immovables or slaves, or compromise respecting his rights, without an authority from the judge, granted on the advice of a meeting of the family.

2 A. 71; See 6 N. S. 190.

ART. 349.—The tutor may accept legacies, donations and other advantages made to his ward; but he cannot, in any case, dispose gratuitously of the movable or immovable property of the minor, or of any part thereof.

4 L. 477.

ART. 350.—The tutor is bound to give an account of his administration at the expiration of the tutorship, and whenever he is ordered to do so, by the judge.

2 A. 71; 8 N. S. 665; See 10 L. 819.

ART. 351.—The tutor who absents himself from the State, is bound to cause another tutor to be appointed in his stead, and, previous to his departure, to give an account of his administration; and if he neglects so to do, he may be arrested and held to bail in such sum as the judge shall determine.

On his return, the judge shall decide whether he is to resume his tutorship or not.

15 L. 74; See 17 L. 438, 537.

ART. 352.—The account of the tutorship is given at the expense of the minor; the tutor advances that expense.

1 R. 342; See 12 M. 106.

ART. 353.—The sum which appears to be due by the tutor as the balance of his accounts, bears interest, without a judicial demand, from the day on which the accounts were closed.

The same rule applies to the balance due to the tutor.

5 A. 565; See 12 M. 106.

ART. 354.—The property of the tutor is tacitly mortgaged in favor of the minor from the day of the appointment of the tutor, as security for his administration, and for the responsibility which results from it. This general mortgage does not take effect, when the tutor has given a special mortgage according to article 331.

5 M. 574; 7 M. 361; 8 L. 193; 2 R. 501; See 12 R. 172; post arts. 3232, 3233, 3293.

ART. 355.—Every agreement which may take place between the tutor and the minor arrived at the age of majority, shall be null and void, unless the same was entered into after the rendering of a full account and delivery of the vouchers, the whole being made to appear by the receipt of the person to whom the account was rendered, ten days previous to the agreement.

2 L. 523; 10 L. 264; 4 R. 290; 1 A. 35; 2 A. 71; See arts. 1465, 1466.

ART. 356.—The action of the minor against his tutor, respecting the acts of the tutorship, is prescribed by four years, to begin from the day of his majority.

4 L. 368; 6 L. 161; 1 R. 111; 11 R. 491; 10 R. 173; 4 A. 488; 2 A. 160; 6 A. 327; See arts. 2218, 3089, 3507.

CHAPTER II.

OF THE CURATORSHIP OF MINORS.

ART. 357.—When the minors are arrived to the age of puberty, that is at the full age of fourteen years for males, or at the full age of twelve years for females, they pass from under the authority of a tutor to that of a curator.

Stat. 17th March, 1828 p 58.—§ 1. Whenever a father or mother has appointed a tutor to his or her child, by his last will or testament, the said child shall remain under the authority of the said tutor until he or she arrives at the age of majority, or is emancipated; unless the said tutor should be removed from his office for any of the causes mentioned in the three hundred and twenty-third article of the Civil Code.

§ 2. Whenever a minor shall arrive at the age of puberty, if he is then under the authority of his father or mother, as his guardian, he shall remain under their said authority until the said minor arrives at the age of majority, or is emancipated; unless his guardian, if he be his father, should have been removed from his office for any of the causes mentioned in the three hundred and twenty-sixth article of the said Code; or, if his mother be his guardian, unless she has contracted a second marriage, in which case a curator *ad bona* shall be appointed to the said minor, unless the judge had authorized the mother to retain her guardianship since the said marriage, by and with the advice of the family meeting of the said minor.

§ 3. So much of the three hundred and fifty-seventh and three hundred and sixty-second articles of the Civil Code as is contrary to the provisions of this act, be, and the same is hereby repealed.

Stat. 11th March, 1830, p. 48.—§ 9. There shall be hereafter no curator *ad bona* or curator *ad litem* appointed in any case; the persons and estates of minors shall in all cases be placed under the power of tutors and under tutors; and the powers, duties and responsibilities of tutors and under-tutors, as well as their liability to be removed from office, shall continue until the minor or minors attain the age of majority, or are otherwise emancipated: Provided that this section shall not apply to cases in which curators *ad bona* shall have been appointed before the promulgation of this act.

ART. 358.—There are two kinds of curators for minors above the age of puberty:

The curator *ad bona* (of property;)

The curator *ad litem* (for suits.)

See amendment to art. 357.

ART. 359.—The curator *ad bona* administers the estate of the minor, takes care of his person, and intervenes in all his contracts.

The curator *ad litem* assists the minor in courts of justice, and acts

as curator *ad bona* in cases where the interests of that curator are opposed to the interests of the minor.

See Art. 357.

ART. 360.—The curator *ad bona* differs from the tutor in no respect except the following :

1. The tutor is appointed to the minor, whether he be willing or not ; but the curator *ad bona* cannot be appointed to the minor against his will, the judge being bound to appoint the person mentioned to him by the minor, if such person has, in every other respect, the necessary qualifications ;

2. Tutorship is natural, testamentary, legal or dative ; curatorship on the contrary is only dative ;

3. The tutor stipulates in every contract, in the name of the minor, and without his presence, and appears for the minor in every case when his own interest is not in opposition to that of the minor ; whilst the curator *ad bona* only assists the minor in every contract in which he is concerned, and does not appear for him in courts of justice, this being the particular duty of the curator *ad litem*.

See Art. 357.

ART. 361.—With the exception of the differences mentioned in the preceding article, the obligations, powers, rights and duties of the curator *ad bona* are the same as those of the tutor, and the rules which have been established in the chapter which treats of the tutorship, apply likewise to the curator *ad bona* in every respect.

See Art. 357.

ART. 362.—Although minors, who have arrived at the age of puberty, have a right to point out to the judge the person whom they wish to be appointed their curator *ad bona*, nevertheless, when they have once made their choice, or when they have accepted the curator who has been appointed for them, they are bound to keep him until their majority or emancipation, unless they have a lawful reason to cause him to be removed.

See Art. 357.

ART. 363.—Until the minor makes choice of a curator, the functions of the tutor continue in the same manner as if the minor had not attained the age of puberty.

See Art. 357.

ART. 364.—The curator *ad litem*, as well as the curator *ad bona*, is appointed by the judge, who is bound to appoint the person designated to him by the minor, if such person has in every other respect the necessary qualifications.

See Art. 357.

ART. 365.—The curator *ad litem* may be appointed generally for all the concerns of the minor, or specially for some particular case.

In both cases the curator *ad litem* is bound only to take such an oath as that of an under-tutor, but not to give security. The duties of a curator *ad litem*, specially appointed, are at an end, when the business for which he has been appointed is terminated. But the curator *ad litem* appointed generally cannot be removed but for some just cause ; and his functions as well as those of the curator *ad bona* continue until the time of the majority or emancipation of the minor.

See Art. 357.

ART. 366.—The minor who has arrived at the age of puberty, and who is not emancipated, cannot appear in a court of justice without the intervention of a curator *ad litem*; and if he shall have none, it is the duty of the judge to appoint one for him, in order that the proceedings may be regular.

See Art. 357.

CHAPTER III.

OF EMANCIPATION.

ART. 367.—The minor is emancipated of right by marriage.

4 A. 375; See 7 R. 338.

ART. 368.—The minor who is married, can not only appear in court without the assistance of a curator, but can authorize his wife to appear therein.

2 A. 553; 5 A. 692.

ART. 369.—The minor, although not married, may be emancipated by his father, or if he has no father, by his mother, when he shall have arrived at the full age of fifteen years.

This emancipation takes place by the declaration to that effect of the father or mother, before a notary public in presence of two witnesses.

Stat. 18th March, 1847, p. 64.—§ 1. Whenever a minor above the age of eighteen years shall be desirous of being dispensed from the time prescribed by law for attaining the age of majority, the said minor shall present a petition to the district judge having jurisdiction, wherein he shall set forth the causes for which he wishes to have the time for attaining majority dispensed with, and that he believes himself fully capable of administering and managing his estate.

§ 2. It shall be the duty of said judge to grant an order directing the convocation of a family meeting before the recorder, or any notary public of the parish of the minor's residence on a day fixed in said order; a copy of the petition shall be served on the tutor of said minor, citing him to appear and show cause why said minor should not be emancipated.

§ 3. It shall be the duty of the recorder or notary public before whom said meeting has been convened, to grant to said minor a certified copy of the process verbal of the proceedings, in order that said minor may obtain from the district judge an order, either in chambers or in open court, homologating the same.

2 R. 513.

ART. 370.—The orphan minor may likewise be emancipated by the judge (but not before he has arrived at the full age of eighteen years) if the family meeting called to that effect be of opinion that he is able to administer his property.

The emancipation may be petitioned for, either by a relation of the minor, or by the minor himself.

9 L. 571.

ART. 371.—The minor may be emancipated against the will of his father and mother, when they ill treat him excessively, refuse him support, or give him corrupt examples.

ART. 372.—The account of the tutorship or curatorship must be rendered to the emancipated minor assisted by a curator *ad hoc*, who shall be assigned to him by the judge.

See 2 A. 293.

ART. 373.—The minor who is emancipated has the full administration of his estate, and may pass all acts which are confined to such administration, grant leases, receive his revenues and moneys which may be due to him, and give receipts for the same.

5 A. 692; 3 L. 363.

ART. 374.—He cannot bind himself legally by promise or obligation for any sum exceeding the amount of one year of his revenue.

ART. 375.—The minor who is emancipated has no right to claim a restitution on the plea of mere lesion against acts of simple administration.

He has no right either to claim a restitution for mere lesion against obligations or promises which do not exceed the amount of one year of his revenue.

If, however, he has contracted in the same year, towards one or more creditors, several obligations, each of which does not exceed the amount of one year of his revenue, but which together exceed that amount, these obligations may be reduced according to the discretion of the judge, whose duty it shall be in such case to take into consideration the estate of the minor, the probity or dishonesty of the persons who have dealt with him, and the utility or inutility of the expenses.

ART. 376.—The emancipated minor can neither alienate, affect nor mortgage his immovables or slaves without the authority of the judge, which can only be granted with the advice of a family meeting, and in case of absolute necessity or of a certain advantage.

2 A. 553; 9 R. 36; 5 N. S. 651; See 3 L. 363, 491, 567.

ART. 377.—The emancipated minor has no right to dispose of his movables or immovables by donation *inter vivos* unless it be by marriage contract in favor of the person to whom he is to be married.

3 L. 363, 491; 9 R. 36; 2 A. 553.

ART. 378.—The minor, who is emancipated otherwise than by marriage, cannot appear in courts of justice without the assistance of a curator *ad litem*, who is to be appointed for him specially by the judge for that purpose.

ART. 379.—The emancipated minor who is engaged in trade, is considered as having arrived to the age of majority, for all the acts which have any relation to such trade.

5 N. S. 651; 9 R. 505; 2 R. 513; See 15 L. 13; 1 N. S. 537; 3 N. S. 400; 8 N. S. 196; post, Arts. 1775, 1778.

ART. 380.—The emancipation, whatever be the manner in which it may have been effected, may be revoked, whenever the minor contracts engagements which exceed the limits prescribed by law.

1 N. S. 537.

ART. 381.—The revocation of emancipation places the minor under the same authority to which he was subject previous to his being emancipated.

But if he has been emancipated against the will of his father and

mother, for excessive ill treatment, refusal to support him, or corrupt examples given him, another curator shall be appointed in the manner provided by law.

TITLE IX.

OF PERSONS INSANE, IDIOTS AND OTHER PERSONS INCAPABLE OF ADMINISTERING THEIR ESTATES.

CHAPTER I.

OF THE INTERDICTION AND CURATORSHIP OF PERSONS INCAPABLE OF ADMINISTERING THEIR ESTATES, WHETHER ON ACCOUNT OF INSANITY OR OF SOME OTHER INFIRMITY.

ART. 382.—No person above the age of majority, who is subject to an habitual state of madness or insanity, shall be allowed to take charge of his own person to administer his estate, although such person shall, at times, appear to have the possession of his reason.

ART. 383.—Every relation has a right to petition for the interdiction of a relation; so has every husband a right to petition for the interdiction of his wife, and every wife of her husband.

ART. 384.—If the insane person has no relations and is not married, or if his relations or consort do not act, the interdiction may be solicited by any stranger, or pronounced *ex officio* by the judge, after having heard the counsel of the person whose interdiction is prayed for, whom it shall be the duty of the judge to name, if one be not already named by the party.

ART. 385.—Every interdiction shall be pronounced by the judge of the parish of the domicile or residence of the person to be interdicted.

16 L. 63.

ART. 386.—The acts of madness, insanity or fury, must be proved to the satisfaction of the judge, that he may be enabled to pronounce the interdiction, and this proof may be established as well by written as by parol evidence; and the judge may moreover interrogate or cause to be interrogated, by any other person commissioned by him for that purpose, the person whose interdiction is petitioned for, or cause such person to be examined by physicians, or other skilful persons, in order to obtain their report upon oath on the real situation of him who is stated to be of unsound mind.

1 N. S. 122.

ART. 387.—Pending the issue of the petition for interdiction the judge may, if he deems it proper, appoint, for the preservation of the movable and for the administration of the immovable estate of the defendant, an administrator *pro tempore*.

5 A. 122.

ART. 388.—Every judgment, by which an interdiction is pronounced, shall be provisionally executed notwithstanding the appeal.

ART. 389.—In case of appeal, the appellate court may, if they deem it necessary, proceed to the hearing of new proofs and question or cause to be questioned, as above provided, the person whose interdiction is petitioned for, in order to ascertain the state of his mind.

ART. 390.—On every petition for interdiction, the costs shall be paid out of the estate of the defendant, if he shall be interdicted, and by the petitioner, if the interdiction prayed for shall not be pronounced.

ART. 391.—Every sentence of interdiction shall be published three times, in at least two of the newspapers printed in New Orleans, or made known by advertisements at the door of the court-house of the parish of the domicile of the person interdicted, both in the French and English languages, and this duty is imposed upon him who shall be appointed curator of the person interdicted, and shall be performed within a month after the date of the interdiction, under the penalty of being answerable for all damages to such persons as may, through ignorance, have contracted with the person interdicted.

ART. 392.—No petition for interdiction, if the same shall have once been rejected, shall be acted upon again, unless new facts, happening posterior to the sentence, shall be alleged.

ART. 393.—The interdiction takes place from the day of presenting the petition for the same.

ART. 394.—All acts done by the person interdicted from the date of the filing the petition for interdiction, until the day when the same is pronounced, are null.

ART. 395.—No act anterior to the petition for the interdiction shall be annulled, except where it shall be proved that the cause of such interdiction notoriously existed at the time when the deeds, the validity of which is contested, were made, or that the party who contracted, with the lunatic or insane person could not have been deceived as to the situation of his mind.

Notoriously, in this article, means that the insanity was generally known by the persons who saw and conversed with the party.

ART. 396.—After the death of a person, the validity of acts done by him cannot be contested for cause of insanity, unless his interdiction was pronounced or petitioned for previous to the death of such person, except in cases in which the mental alienation manifested itself within ten days previous to the decease, or in which the proof of the want of reason results from the act itself which is contested.

ART. 397.—Within a month, to reckon from the date of the judgment of interdiction, if there has been no appeal from the same, or if there has been an appeal, then within a month from the confirmative sentence, it shall be the duty of the judge of the parish of the domicile or residence of the person interdicted to appoint a curator to his person and estate.

ART. 398.—This appointment is made according to the same forms as the appointment to the tutorship of minors.

After the appointment of the curator to the person interdicted, the duties of the administrator *pro tempore*, if he shall not have been appointed curator, are at an end; and he shall give an account of his administration to the curator.

ART. 399.—The married woman, who is interdicted, is of course under the curatorship of her husband. Nevertheless it is the duty of the husband, in such case, to cause to be appointed by the judge a curator *ad litem*, who may appear for the wife in every case when she may have an interest in opposition to the interest of her husband, or one of a nature to be pursued or defended jointly with his.

ART. 400.—The wife may be appointed curatrix to her husband, if she has, in other respects, the necessary qualifications.

She is not bound to give security.

ART. 401.—No one, except the husband with respect to his wife, or the wife with respect to her husband, the relations in the ascending line with respect to the relations in the descending line, and *vice versa* the relations in the descending line with respect to the relations in the ascending line, can be compelled to act as curator to a person interdicted more than ten years, after which time the curator may petition for his discharge.

ART. 402.—The person interdicted is, in every respect, like the minor who has not arrived at the age of puberty, both as it respects his person and estate; and the rules respecting the guardianship of the minor, concerning the oath, the inventory and the security, the mode of administering, the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the guardianship, the mode of rendering the accounts, and the other obligations, apply with respect to the curatorship of the person interdicted.

15 L. 173.

ART. 403.—When any one of the children of the person interdicted is to be married, the dowry or advance of money to be drawn from his estate is to be regulated by the judge, with the advice of a family meeting.

ART. 404.—According to the symptoms of the disease, under which the person interdicted labors, and according to the amount of his estate, the judge may order that the interdicted person be attended in his own house, or that he be placed in a bettering house, or indeed if he be so deranged as to be dangerous, he may order him to be confined in safe custody.

ART. 405.—The income of the person interdicted shall be employed in mitigating his sufferings, and in accelerating his cure, under the penalty against the curator of being removed in case of neglect.

ART. 406.—He who petitions for the interdiction of any person, and fails in obtaining such interdiction, may be prosecuted for and sentenced to pay damages, if he shall have acted from motives of interest or passion.

ART. 407.—Interdiction ends with the causes which gave rise to it. Nevertheless the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced.

ART. 408.—Interdiction can only be revoked by the same solemnities which were observed in pronouncing it.

ART. 409.—Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to certain infirmities, are incapable of taking care of their persons and administering their estates.

Such persons shall be placed under the care of a curator, who shall

be appointed and shall administer in conformity with the rules contained in the present chapter.

See 7 L. 248.

ART. 410.—The person interdicted cannot be taken out of the State without a judicial order, given on the recommendation of a family meeting, and on the opinion delivered under oath of at least two physicians, that they believe the departure necessary to the health of the person interdicted.

ART. 411.—There shall be appointed by the judge a superintendent to the person interdicted, whose duty it shall be to inform the judge, at least once in three months, of the state of the health of the person interdicted, and of the manner in which he is treated.

To this end, the superintendent shall have free access to the person interdicted, whenever he wishes to see him.

ART. 412.—It is the duty of the judge to visit the person interdicted, whenever, from the information he receives, he shall deem it expedient.

This visit shall be made at times when the curator is not present.

ART. 413.—Interdicting is not allowed on account of profligacy or prodigality.

CHAPTER II.

OF THE OTHER PERSONS TO WHOM CURATORS ARE APPOINTED.

ART. 414.—If a person be absent from the State, without having appointed any person to administer his estate, and if it should be necessary to appoint some one for that purpose, the judge shall name a curator to administer such estate, according to the rules prescribed in the title of *absentees*.

See 15 L. 81.

ART. 415.—If a wife happens to be pregnant at the time of the death of her husband, no guardian shall be appointed to the child till after his birth; but, if it should be necessary, the judge may appoint a curator for the preservation of the rights of the child who may be born, and for the administration of the estate which may belong to such child.

ART. 416.—If a succession happens to be without heirs or executors, as if the deceased left behind him no relations, nor instituted any person his heir by will, or he who has a right to succeed has renounced the succession, or is absent, or being present, deliberates whether he will accept the succession, and in the mean time refuses to intermeddle, it shall be the duty of the judge to appoint a curator or administrator to the estate, for the preservation of the estate belonging to the inheritance and its administration, as it is prescribed in the chapter of *vacant successions, title of successions*.

ART. 417.—When a debtor surrenders his estate for the benefit of his creditors, they may cause a curator to be appointed, whose duty it shall be to take care of such estate, or they may appoint one or more persons under the name of syndics, or assignees, to have the management of the estate.

TITLE X.

OF CORPORATIONS.

CHAPTER I.

OF THE NATURE OF CORPORATIONS, OF THEIR USE AND KINDS.

ART. 418.—A corporation is an intellectual body, created by law, composed of individuals united under a common name, the members of which succeed each other, so that the body continues always the same, notwithstanding the change of the individuals which compose it, and which, for certain purposes, is considered as a natural person.

2 R. 209, 224, 529.

ART. 419.—The use of corporations is to contribute by the union and assistance of several persons, to the promotion of some object of general utility, although they be at the same time established for the advantage of those who are members of such corporations.

See 13 L. 497; 9 L. 397.

ART. 420.—Corporations are of two kinds: political and private.

Political corporations are those which have principally for their object the administration of a portion of the State, and to whom a part of the powers of government is delegated to that effect.

All others are private corporations.

3 A. 294; See 3 R. 196.

ART. 421.—Private corporations are divided into civil and religious, and this distinction results, as well from the quality of the persons who generally compose these kinds of corporations, as from the difference of the object of their establishment.

See 9 L. 397.

ART. 422.—Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions.

See 2 R. 209.

CHAPTER II.

OF THE RIGHTS AND PRIVILEGES OF CORPORATIONS, AND OF THEIR INCAPACITIES.

ART. 423.—Corporations must not only be authorized by the legislature, but a name must be given to them; and it is in that name they must sue or be sued, and do all their legal acts, although a slight alteration in this name be not important.

2 N. S. 539; 3 N. S. 476; 12 L. 444; 3 A. 541; 6 A. 542; See 19 L. 365; 2 R. 196.

ART. 424.—Corporations legally established are substituted for persons, and their union which renders common to all those who compose them, their interests, their rights and their privileges, is the reason why they are considered as one single whole. Hence it follows that they may possess an estate, and have a common treasury for the purpose of depositing their money; that they are capable of receiving legacies and donations; that they may make valid contracts, obligate others and obligate themselves towards others; exercise the rights which belong to them; manage their own affairs; appear in courts of justice, and even enact statutes and regulations for their own government, provided such statutes and regulations be not contrary to the laws of the political society of which they are members.

2 A. 897; 3 A. 19; See 13 L. 497; 14 L. 395; 2 R. 209.

ART. 425.—The right of succession also is inherent to the nature of corporations; so that as long as they exist they transmit to their successors their rights and their property.

The right of electing, in the manner prescribed by law, new members in the stead of those who have ceased to be members of the corporation, is a right impliedly attached to the constitution of every regularly established corporation.

ART. 426.—Corporations are intellectual beings, different and distinct from all the persons who compose them.

9 L. 397.

ART. 427.—The estate and rights of a corporation belong so completely to the body, that none of the individuals who compose it can dispose of any part of them.

In this request the thing belonging to a body is very different from a thing which is common to several individuals, as respects the share which every one has in the partnership which exists between them

9 L. 397.

For "*request*" read "*respect*."

ART. 428.—According to the above rule, what is due to a corporation is not due to any of the individuals who compose it, and *vice versa*.

A creditor of a corporation cannot therefore compel any of the members thereof to pay what may be due to him by the corporation; he can demand his payment of the corporation only, through their president, syndic, or attorney in fact, and he can seize no other effects but such as belong to the corporation, provided the debt has been contracted by the corporation through their president, syndic, or attorney in fact; for if all the individuals who compose the corporation have signed the deed personally, every one of them may be compelled to make payment, either for his individual portion or *in solidum*, when it has been stipulated expressly that the debt was contracted *in solidum*.

13 L. 461; 3 N. S. 476; 5 L. 461; 9 L. 397.

ART. 429.—From the circumstance that a corporation is an intellectual being, it follows that they cannot personally transact all that they have a right legally to do, as has been above observed; wherefore it becomes necessary for every corporation to appoint some of their members to whom they may intrust the direction and care of their

affairs, under the name of mayor, president, syndics, directors or others, according to the statutes and qualities of such corporation.

3 A. 94; See 5 L. 461; 1 R. 470; 2 R. 209.

ART. 430.—The attorneys in fact or officers thus appointed by corporations for the direction and care of their affairs, have their respective duties pointed out by their nomination, and exercise them according to the general regulations and particular statutes of the corporation of which they are the heads.

These attorneys or officers, by contracting, bind the corporations to which they belong in such things as do not exceed the limits of the administration which is intrusted to them; their act is supposed to be the act of the corporation.

If the powers of such attorneys or officers have not been expressly determined, they are regulated in the same manner as those of other agents.

7 R. 459; 3 A. 294; See 2 R. 209, 244; 3 R. 196; 5 L. 463.

ART. 431.—Corporations being intellectual persons, they are subject to various kinds of incapacities, some of which are inherent to their nature, others are established by law.

7 R. 459.

ART. 432.—A corporation cannot be administrator, guardian, or testamentary executor, nor fulfil any other office of personal trust. A corporation cannot be imprisoned, for its existence being ideal, no body can arrest or confine it.

5 L. 461.

ART. 433.—In the same manner a corporation cannot bring an action for assault and battery or for other injuries of that nature; for a corporation can neither beat nor be beaten in its corporated capacity.

5 L. 461; 7 R. 459.

ART. 434.—A corporation cannot commit the crime of treason, or any other crime or offence, in its corporate capacity, although its members may be guilty of those crimes in their individual and respective capacities.

7 R. 459.

ART. 435.—In corporations the act of the majority is considered as the act of the whole.

See 9 L. 397; 3 N. S. 476.

ART. 436.—The statutes and regulations which corporations enact for their police and discipline, are obligatory upon all their respective members who are bound to obey them, provided such statutes contain nothing contrary to the laws, to public liberty, or to the interest of others.

1 R. 470; 3 A. 19.

ART. 437.—Corporations unauthorized by law or by an act of the legislature, enjoy no public character, and cannot appear in a court of justice, but in the individual name of all the members who compose it, and not as a political body; although these corporations may acquire and possess estates, and have common interests as well as all other private societies.

1 R. 470; 3 A. 541; See 12 R. 428.

CHAPTER III.

OF THE DISSOLUTION OF CORPORATIONS

ART. 438.—A corporation legally established may be dissolved :

1. By an act of the legislature, if they deem it necessary or convenient to the public interest ; provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it cannot be repealed without providing for the reimbursement of the advances made, or making full indemnity to such individuals ;

2. By the forfeiture of their charter, when the corporation abuse their privileges, or refuse to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation.

See 9 L. 506 ; 13 L. 497 ; 14 L. 395.

BOOK II.

OF THINGS AND OF THE DIFFERENT MODIFICATIONS OF PROPERTY.

TITLE I.

OF THINGS.

CHAPTER I.

OF THE DIVISION OF THINGS.

ART. 439.—The word *estate* in general is applicable to any thing of which riches or fortune may consist. This word is likewise relative to the word thing, which is the second object of jurisprudence, the rules of which are applicable to persons, things, and actions.

ART. 440.—Things are either common or public ; they either belong to corporations, or they are the property of individuals.

ART. 441.—Things which are common, are those of which the property belongs to nobody in particular, and which all men may freely use, conformably to the use for which nature has intended them, such as air, running water, the sea and its shores.

ART. 442.—Seashore is that space of land over which the waters of the sea are spread in the highest water, during the winter season.

ART. 443.—From the public use of the sea-shores it follows that every one has a right to build cabins thereon for shelter, and likewise to land there, either to fish or to shelter themselves from the storm, to moor ships, to dry nets, and the like, provided no damage arise from the same to the buildings and erections made by the owners of the adjoining property.

ART. 444.—Public things are those, the property of which is vested in a whole nation, and the use of which is allowed to all the members of the nation : of this kind are navigable rivers, sea-ports, roads, harbors, highways, and the bed of rivers, as long as the same is covered with water.

Hence it follows that every man has a right freely to fish in the rivers, ports, roads and harbors.

13 L. 278; 3 A. 432.

ART. 445.—Things which are for the common use of a city or other place, as streets and public squares, are likewise public things.

See 13 L. 132; 5 L. 157.

ART. 446.—The use of the banks of navigable rivers or streams is public; accordingly every one has a right freely to bring his vessels to land there, to make fast the same to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like.

Nevertheless the property of the river banks belongs to those who possess the adjacent lands.

6 M. 231; 5 L. 132; 3 L. 557; 11 L. 170; 13 L. 326; 13 L. 395; 8 R. 211; 6 A. 451; See 13 L. 122.

ART. 447.—The provisions of the ancient laws concerning the distinction of things into things holy, sacred and religious; and the nature and inalienability of these kinds of things are abolished; and nothing prevents the corporations or congregations to which these things belong, from alienating them, provided it be done in the manner and under the restrictions prescribed by their acts of incorporation.

ART. 448.—The banks of a river or stream are understood to be that which contains it in its ordinary state of high water; for the nature of the banks does not change, although from some cause they may be overflowed for a time.

Nevertheless on the borders of the Mississippi, where there are levees, the levees shall form the banks.

3 L. 577; 6 A. 451; See 17 L. 573; 13 L. 295.

ART. 449.—Things which belong in common to the inhabitants of cities and other places, are of two kinds:

Common property, to the use of which all the inhabitants of a city or other place, and even strangers, are entitled in common, such as the streets, the public walks, the quays:

And common property which, though it belongs to the corporation, is not for the common use of all the inhabitants of the place, but may be employed for their advantage by the administrators of its revenues.

See 5 L. 132.

ART. 450.—Private estates and fortunes are those things which belong to individuals.

6 R. 488.

ART. 451.—Things are divided, in the second place, into corporeal and incorporeal:

Corporeal things are such as are made manifest to the senses—which we may touch or take, which have a body, whether animate or inanimate. Of this kind are fruits, corn, gold, silver, clothes, furniture, lands, meadows, woods and houses;

Incorporeal things are such as are not manifest to the senses, and which are conceived only by the understanding, such as the rights of inheritance, services and obligations.

ART. 452.—The third and last division of things is into movables and immovables.

CHAPTER II.

OF IMMOVABLES.

ART. 453.—Immovable things are in general, such as cannot either move themselves or be removed from one place to another.

But this definition, strictly speaking, is applicable only to such things as are immovable by their own nature, and not to such as are so only by the disposition of the law.

ART. 454.—There are things immovable by their nature, others by their destination, and others by the object to which they are applied.

4 A. 126; 2 A. 451.

ART. 455.—Lands and buildings, or other constructions, whether they have their foundations in the soil or not, are immovable by their nature.

4 A. 126; 5 A. 113; See 12 R. 225.

ART. 456.—Standing crops, and the fruits of trees not gathered, and trees while standing, are likewise immovable, and are considered as part of the land to which they are attached.

As soon as the crop is cut down, and the fruits gathered, or the trees cut down, although not yet carried off, they are movables.

If a part only of the crop be cut down, that part only is movable.

4 A. 127; 6 A. 264; 9 R. 256; 2 A. 451.

ART. 457.—The fruits of an immovable, gathered or produced since it was under seizure, are considered as making part thereof, and inure to the benefit of the person making the seizure.

9 R. 256; 4 A. 126; 5 A. 225; 2 A. 451.

ART. 458.—The pipes made use of for the purpose of bringing water to a house or other inheritance, are immovable, and are a part of the tenement to which they are attached.

ART. 459.—Things which the owner of a tract of land has placed upon it for its service and improvement, are immovable by destination.

Thus the following things are immovable by destination, when they have been placed by the owner for the service and improvement of a tract of land, to wit:

Cattle intended for cultivation;
 Implements of husbandry;
 Seeds, plants, fodder and manure;
 Pigeons in a pigeon house;
 Bee hives;

Mills, kettles, alembics, cisterns, vats, and other machinery made use of in carrying on the plantation works;

The utensils necessary for working cotton, and saw mills, taffia distilleries, sugar refineries and other manufactures.

All such movables as the owner has attached permanently to the tenement or to the building, are likewise immovable by destination.

2 A. 451; 4 A. 126; 5 A. 717; 6 A. 264; 6 R. 424.

ART. 460.—The owner is supposed to have attached to his tenement or building for ever such movables as are affixed to the same with plaster, or mortar, or such as cannot be taken off without being broken or injured, or without breaking or injuring the part of the building to which they are attached.

6 R. 424; 5 A. 717.

ART. 461.—Slaves, though movables by their nature, are considered as immovables, by the operation of law.

1 A. 597; 6 A. 362.

ART. 462.—Incorporeal things, consisting only in a right, are not of themselves strictly susceptible of the quality of movables or immovables; nevertheless they are placed in the one or the other of these classes, according to the object to which they relate, and the rules hereinafter established.

ART. 463.—The following are considered as immovable, from the object to which they apply:

The usufruct and use of immovable things;

A servitude established on real estate;

An action for the recovery of an immovable estate or an entire succession.

2 R. 1; 12 R. 284.

CHAPTER III.

OF MOVABLES.

ART. 464.—Estates are movable either by their nature or by the disposition of the law.

6 R. 424; See 4 N. S. 604.

ART. 465.—Things movable by their nature are such as may be carried from one place to another, whether they move by themselves, as cattle, or cannot be removed without an extraneous power, as inanimate things.

6 R. 424.

ART. 466.—Obligations and actions, the object of which is to recover money due or movables, although these obligations are accompanied with a mortgage; obligations which have for their object a specific performance; and those which from their nature resolve themselves into damages; shares or interests in banks or companies of commerce, or industry or other speculations, although such companies be possessed of immovables depending upon such enterprises, such shares or interests are considered as movables with respect to every associate as long only as the society is in existence. But as soon as the society is dissolved, the right which each member has to the division of the immovables belonging to it, produces an immovable action.

In the class of things movable by the determination of the law, are also considered perpetual rents and annuities, whether they be founded on a price in money or on the price or the condition of the alienation of an immovable.

2 R. 1; 12 R. 234.

ART. 467.—All things corporeal and incorporeal, which have not the character of immovables by their nature or by the disposition of the law, according to the rules laid down in this title, are considered as movables.

2 R. 1.

ART. 468.—Materials arising from the demolition of a building, those which are collected for the purpose of raising a new building, are movables, until they have been made use of in raising a new building.

But if the materials have been separated from the house or other edifice, only for the purpose of having it repaired or added to, and with the intention of replacing them, they preserve the nature of immovables, and are considered as such.

6 R. 424; 2 A. 451.

ART. 469.—The word *furniture* made use of in the provision of the law, or in the conventions or acts of persons, comprehends only such furniture as is intended for the use and ornament of apartments, but not libraries which happen to be there nor plate.

ART. 470.—The expression of *movable goods*, that of *movables* or *movable effects*, employed as above stated, comprehends generally all that is declared to be movable, according to the rules laid down in this chapter.

ART. 471.—The sale or gift of a house ready furnished, includes only such furniture as is in the house.

ART. 472.—The sale or gift of a house *with all that is in it*, does not include the money, nor the debts, or other rights, the titles of which may be in the house; all other movable effects are included.

4 N. S. 664.

CHAPTER IV.

OF ESTATES CONSIDERED IN THEIR RELATION TO THOSE WHO POSSESS THEM.

ART. 473.—Things, in their relation to those who possess or enjoy them, are divided into two classes; those which are not susceptible of ownership, and those which are.

ART. 474.—Among those which are not susceptible of ownership, there are some which can never become the object of it, as things in common, of which all men have the enjoyment and use.

There are things, on the contrary, which, though naturally susceptible of ownership, may lose this quality in consequence of their being applied to some public purpose, incompatible with private ownership, but which resume this quality as soon as they cease to be applied to that purpose, such as the high roads, streets and public places.

ART. 475.—Things susceptible of ownership, are all those which are held by individuals, and which may be alienated by sale, exchange, donation, prescription or otherwise.

ART. 476.—Individuals have the free disposal of the property which belongs to them, under the restrictions established by law.

But the property of the corporations of cities, or other corporations, are administered according to laws and regulations which are peculiar to them, and can only be alienated in the manner and under the restrictions prescribed in their several acts of incorporation.

ART. 477.—The successions of persons who die without heirs, or which are not claimed by those having a right to them, belong to the State.

See 5 R. 9; 12 R. 584.

ART. 478.—The national domain, properly speaking, comprehends all the landed estate and all the rights which belong to the nation, whether the latter be in the actual enjoyment of the same, or have only a right to re-enter on them.

ART. 479.—There may be different kinds of rights to estates:

1. A full and entire property;
2. A right to the mere use and enjoyment;
3. A right to certain services due upon the estate.

TITLE II.

OF OWNERSHIP.

CHAPTER I.

GENERAL PRINCIPLES.

ART. 480.—Ownership is the right by which a thing belongs to some one in particular, to the exclusion of all other persons.

6 R. 488; See 12 R. 474.

ART. 481.—The ownership of a thing is vested in him who has the immediate dominion of it, and not in him who has a mere beneficiary right in it.

ART. 482.—Ownership is divided into perfect and imperfect.

Ownership is perfect, when it is perpetual, and when the thing, which is the subject of it, is unencumbered with any charges towards any other person than the owner.

On the contrary, ownership is imperfect, when it is to terminate at a certain time or on a condition, or if the thing, which is the subject of it, being an immovable, is charged with any real right towards a third person, as an usufruct, use or service.

When an immovable is subject to an usufruct, the owner of it is said to possess the mere ownership.

2 A. 80.

ART. 483.—Absolute ownership gives the right to enjoy and to dispose of one's property in the most unlimited manner, provided it is not used in a way prohibited by laws or ordinances.

Persons who reside out of the State, cannot dispose of the property they possess here, in a manner different from that prescribed by its laws

See 2 A. 659; 12 R. 598.

ART. 484.—Imperfect ownership only gives the right of enjoying and disposing of property, when it can be done without injuring the rights of others, that is, of those who may have real or other rights to exercise upon the same property.

2 A. 80.

ART. 485.—The right of ownership necessarily supposes a person in whom this right exists, whether the owner be a real person, such as an individual, or a civil or intellectual person, such as a corporation.

ART. 486.—It is of the essence of the right of ownership that it cannot exist in two persons for the whole of the same thing but they may be owners of the same thing in common, and each for the part which he may have therein.

ART. 487.—He who has once acquired the ownership of a thing by one title, cannot afterwards acquire it by another title, unless it be to supply a deficiency in the first title.

On the other hand, nothing prevents a thing due to a person under one title, from being also due to him under another, as for example, when a thing has been sold, and is afterwards bequeathed to the same person by the owner.

ART. 488.—The ownership and the possession of a thing, are entirely distinct.

The right of ownership subsists independently of the exercise of it. The owner is not less the owner because he performs no act of ownership, or because he is disabled from performing any such acts, or even because another performs such acts, without the knowledge or against the will of the owner.

But the owner exposes himself to the loss of his right of ownership in a thing, if he permits it to remain in the possession of a third person, for a time sufficient to enable the latter to acquire it by prescription.

ART. 489.—No one can be divested of his property, unless for some purpose of public utility, and on consideration of an equitable and previous indemnity, and in a manner previously prescribed by law.

By an equitable indemnity in this case is understood, not only a payment for the value of the thing of which the owner is deprived, but a remuneration for the damages which may be caused thereby.

See 9 L. 205.

No. 174.—*An Act to amend an Act to provide for the expropriation of Lands for Railroads, and other works of public utility.*—§ 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the first section of an act to provide for the expropriation of land for railroads, and other works of public utility, approved March the eighth, one thousand eight hundred and fifty-two, be, and the same is hereby amended as to read thus :—That whenever any corporation constituted under the laws of this State, for

the construction of a railroad, or plank-road, or a turnpike-road, or a canal for navigation, or for the purpose of transmitting intelligence by magnetic telegraph, cannot agree with the owner or owners of any land which may be wanted for the construction of such road, canal, or magnetic telegraph, or the works connected therewith, it shall be lawful for such corporation to apply by petition to the judge of the district court in which such land may be situated; or if the land extends into two districts, to the judge of the district in which the owner thereof resides, and if the owner does not reside in either district, then to the judge of either district; describing the lands necessary for their purposes, with a plan of the same, and a statement of the improvements thereon, if any, and the name of the owners thereof, if known and present in the State, with a prayer that the land be adjudged to such corporation, upon the payment to the owner of all such damage as he may sustain in consequence of the expropriation of his land for such public work. That all claims for land, or damages to the owner, caused by its appropriation or use for the construction of any of said public works, shall be barred by two years prescription, which shall commence to run from the date at which the land was actually occupied and used for the construction of said works.

§ 2. Be it further enacted, &c., In all cases where any corporation shall commit such trespass, or do any thing for which an action lies, shall be liable to be sued in the parish where such damage is done, or trespass committed.

Approved, April 25th, 1853.

ART. 490.—The ownership of a thing, whether it be moveable or immovable, carries with it the right to all that the thing produces, and to all that becomes united to it, either naturally or artificially.

This is called the right of accession.

See 15 L. 122.

CHAPTER II.

OF THE RIGHT OF ACCESSION TO WHAT IS PRODUCED BY THE THING.

ART. 491.—Fruits of the earth, whether spontaneous or cultivated; civil fruits, that is, the revenues yielded by property from the operation of the law or by agreement; children of slaves, and the young of animals, belong to the proprietor by right of accession.

3 A. 600; 6 A. 634.

ART. 492.—The children of slaves and the young of animals belong to the proprietor of the mother of them, by right of accession.

ART. 493.—The fruits produced by the thing belong to its owner although they may have been produced by the work and labor of a third person, or from seeds sown by him, on the owner's reimbursing such person his expenses.

2 A. 762.

ART. 494.—The produce of the thing does not belong to the simple

possessor, and must be returned with the thing to the owner who claims the same, unless the possessor held it *bona fide*.

ART. 495.—He is a *bona fide* possessor who possesses as owner, by virtue of an act sufficient in terms to transfer property, the defects of which he was ignorant of. He ceases to be a *bona fide* possessor, from the moment these defects are made known to him, or are declared to him by a suit instituted for the recovery of the thing by the proprietor.

2 N. S. 564; 7 N. S. 650; 6 L. 285; 10 R. 175; 6 A. 356; See 11 M. 635; 1 N. S. 405; 2 N. S. 555.

CHAPTER III.

OF THE RIGHT OF ACCESSION TO WHAT UNITES OR INCORPORATES ITSELF TO THE THING.

ART. 496.—All that which becomes united to, or incorporated with property, belongs to the owner of such property, according to the rules hereafter established.

See 13 L. 122.

SECTION I.—Of the Right of Accession, in relation to immovables.

ART. 497.—The property of the soil carries with it the property of all which is directly above and under it.

The owner may make upon it all the plantations, and erect all the buildings which he thinks proper, under the exceptions established in the title of *servitudes* or *services*.

He may construct below the soil all manner of works, digging as deep as he deems convenient, and draw from them all the benefits which may accrue, under such modifications as may result from the laws and regulations concerning mines, and the laws and regulations of the police.

11 R. 225.

ART. 498.—All the constructions, plantations and works made on or within the soil, are supposed to be done by the owner, and at his expense, and to belong to him, unless the contrary be proved, without prejudice to the rights of third persons, who have acquired or may acquire by prescription the property of a subterraneous piece of ground under the building of another, or of any part of the building.

2 R. 133; 12 R. 225.

ART. 499.—If the owner of the soil has made constructions, plantations and works thereon, with materials which did not belong to him, he has a right to keep the same, whether he has made use of them in good or bad faith, on condition of reimbursing their value to the owner of them, and paying damages, if he has thereby caused him any injury or damage.

ART. 500.—When plantations, constructions and works have been made by a third person, and with such person's own materials, the owner of the soil has a right to keep them, or to compel this third person to take away or demolish the same.

If the owner requires the demolition of such works, they shall be demolished at the expense of the person who erected them, without any

compensation; such person may even be sentenced to pay damages, if the case require it, for the prejudice which the owner of the soil may have sustained.

If the owner keeps the works, he owes to the owner of the materials nothing but the reimbursement of their value and of the price of workmanship, without any regard to the greater or less value which the soil may have acquired thereby.

Nevertheless, if the plantations, edifices or works have been done by a third person evicted, but not sentenced to make restitution of the fruits, because such person possessed *bona fide*, the owner shall not have a right to demand the demolition of the works, plantations or edifices, but he shall have his choice either to reimburse the value of the materials and the price of workmanship, or to reimburse a sum equal to the enhanced value of the soil.

18 L. 70; 2 R. 133, 187; 11 R. 225; 12 R. 44; 2 A. 403; See 16 L. 414; 2 A. 376.

ART. 501.—The accretions, which are formed successively and imperceptibly to any soil situated on a shore of a river or creek, are called alluvions.

The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or a creek, and whether the same be navigable or not, who is bound to leave public that portion of the bank, which is required by law for the public use.

18 L. 29; See 8 M. 216; 9 M. 656.

ART. 502.—The same rule applies to derelictions formed by running water retiring imperceptibly from one of its shores and encroaching on the other; the owner of the land, adjoining the shore which is left dry, has a right to the dereliction, nor can the owner of the opposite shore, claim the land which he has lost.

This right does not take place in case of derelictions of the sea.

ART. 503.—If the river or creek, whether navigable or not, carries away by a sudden irruption a considerable tract of land from an adjoining field, which tract of land is susceptible of being identified, by carrying the same on a field lower down, or on the opposite shore, the owner of the tract of land thus carried away, may claim his property, provided he does it within a year, or even after the year has elapsed, if the person, to whose land the soil thus carried away has been united, has not yet taken possession of the same.

ART. 504.—Islands and sand bars, which are formed in the beds of navigable rivers or streams, and which are not attached to the bank, belong to the State, if there be no adverse title or prescription.

ART. 505.—Islands and sand bars which are formed in streams not navigable, belong to the riparian proprietors, and are divided among them according to the rules prescribed in the following articles.

ART. 506.—If the island be formed in the middle of the stream, it belongs to the riparian proprietors, whose lands are situated on the sides opposite the island. If they wish to divide it, it must be divided by a line supposed to be drawn along the middle of the river. The riparian proprietors then severally take the portion of the island which is opposite their land, in proportion to the front they respectively have on the stream opposite the island.

ART. 507.—If on the contrary, the island lie on one of the sides of

the line thus supposed to be drawn, it belongs to the riparian proprietors of the side on which the island is, and must be divided among them in proportion to the front they respectively have on the stream opposite the island.

ART. 508.—If an alluvion be formed in front of the property of several riparian proprietors, the division is to be made according to the extent of the front line of each at the time of the formation of the alluvion.

ART. 509.—If a river or creek, whether navigable or not, by opening itself a new branch, cuts off and surrounds the field of any individual owner of the shore, and makes it an island, the owner shall keep the property of his field.

ART. 510.—If a river or creek, whether navigable or not, opens itself a new bed by leaving its former channel, the owners of the soil newly occupied shall take, by way of indemnification, the former bed of the river, every one in proportion to the quantity of land he has lost.

They shall again take their former property, if the river or creek returns to its former channel.

ART. 511.—Pigeons, bees or fish, which go from one pigeon house, hive or fish-pond, into another pigeon house, hive or fish pond, belong to the owner of those things, provided such pigeons, bees or fish have not been attracted thither by fraud or artifice.

SECTION II.—*Of the Right of Accession in relation to Movables.*

ART. 512.—The right of accession, when it operates upon two movable things, belonging to two different owners, rests altogether upon principles of natural equity.

The following rules shall direct the determination of the judge in unforeseen cases, according to the peculiar circumstances of such cases.

ART. 513.—When two things belonging to different owners, and which have been united in such a manner as to form a whole, are nevertheless of a nature to be separated, so that one may exist without the other, the whole belongs to the owner of the thing which forms the principal part, under the obligation of reimbursing to the other the value of the thing which has been united to his own.

ART. 514.—The part which is considered as principal, is that to which the other has been united only for the use, ornament or completion of the other.

Thus the diamond is the principal part with reference to the gold in which it is set.

The coat itself with reference to the lace, lining and embroidery.

ART. 515.—Nevertheless equity requires that there should be some exception to the preceding rule, when the thing united is much more precious than the principal thing, and when it has been made use of, unknown to the owner. In such case, the owner may demand that the thing be separated and returned to him; even though some injury should result to the thing to which it has been united.

ART. 516.—If of the two things united to form one whole, the one cannot be considered as the accession of the other, the most considerable

in value or in bulk, if the value be nearly equal, shall be considered as the principal.

ART. 517.—If an artificer, or any person whatever, has employed materials which did not belong to him, in the making another article, whether the materials may or may not be brought back to their former shape, the person who was the owner of the materials, has a right to claim the thing which was made out of them, on reimbursing the price of the workmanship.

4 A. 193.

ART. 518.—The rule established in the preceding article, does not apply when the workmanship is so important that it greatly surpasses the value of the materials which have been employed. Industry then is considered as the principal part, and gives the workman a right to keep the thing which he has made, on condition of reimbursing the price of the materials which were employed.

4 A. 193.

ART. 519.—When a person has employed materials, part of which did, and part of which did not belong to him, in making a thing of a new kind, without either part of the materials being entirely destroyed, but in such a manner that they cannot be separated without inconvenience, the thing belongs in common to both proprietors, the share of the one being in proportion to the value of the materials which belonged to him, and of the other in proportion both to the value of the materials which belonged to him, and of the price of the workmanship.

ART. 520.—When a thing has been formed by a mixture of several materials belonging to different proprietors, neither of which can be considered as the principal substance, if the materials can be separated, the proprietor, without whose consent the mixture was made, may demand the separation.

If the materials cannot be separated without inconvenience, their owners acquire in common the property of the thing in proportion to the quantity, quality and value of the materials belonging to each of them.

ART. 521.—If the materials belonging to one of the proprietors be far superior to the others, both in quantity and value, in that case the proprietor of the most valuable materials may claim the thing resulting from the mixture, on reimbursing to the other the value of his materials.

ART. 522.—When the thing remains in common to the proprietors of the materials with which it has been formed, it must be sold at auction for the common benefit.

ART. 523.—In all cases where the proprietor, whose materials have been employed unknown to him in making a thing of another kind, has a right to claim the property of that thing, he is at liberty to demand either that the materials be returned to him in the same species, quantity, weight, measure and quality, or that their value be paid.

ART. 524.—Damages may also be recovered against those who have employed materials belonging to others, unknown to them, according to circumstances; and they are still liable to be prosecuted criminally, should the case require it.

4 A. 193.

TITLE III.

OF USUFRUCT, USE AND HABITATION.

CHAPTER I.

OF USUFRUCT.

SECTION I.—*General Principles.*

ART. 525.—Usufruct is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantages which it may produce, provided it be without altering the substance of the thing.

The obligation of not altering the substance of the thing takes place only in the case of a complete usufruct.

ART. 526.—There are two kinds of usufruct:

Perfect usufruct, which is of things which the usufructuary can enjoy without changing their substance, though their substance may be diminished or deteriorated naturally by time or by the use to which they are applied; as a house, a piece of land, slaves, furniture and other movable effects;

And imperfect or *quasi*-usufruct, which is of things which would be useless to the usufructuary, if he did not consume or expend them, or change the substance of them, as money, grain, liquors.

ART. 527.—Perfect usufruct does not transfer to the usufructuary the property of the things subject to the usufruct; the usufructuary is bound to use them as a prudent administrator would do, to preserve them as much as possible, in order to restore them to the owner as soon as the usufruct terminates.

ART. 528.—Imperfect usufruct, on the contrary, transfers to the usufructuary the property of the things subject to the usufruct, so that he may consume, sell or dispose of them, as he thinks proper, subject to certain charges hereinafter prescribed.

ART. 529.—Usufruct is an incorporeal thing, because it consists in a right.

See 10 L. 92, 246.

ART. 530.—Usufruct is divisible; for if this right is vested in several persons at a time, there is but one usufruct, which is divided among them, each having his portion. The reason is because the object of his right is the receiving the fruits of the thing, which are corporeal and divisible.

ART. 531.—Usufruct may, from its origin, be conferred on several persons in divided or undivided portions.

See 10 L. 246.

ART. 532.—Usufruct may be established by all sorts of titles, by a deed of sale, by a marriage contract, by donation, compromise, exchange, last will, and even by operation of law.

Thus the usufruct to which a father is entitled on the estate of his children during the marriage, is a legal usufruct.

ART. 533.—Usufruct may be established on every description of estates movable or immovable, corporeal or incorporeal.

ART. 534.—Usufruct may be established simply, or to take place at a certain day, or under condition, in a word, under all such modifications as the person who gives such a right may be pleased to annex to it.

ART. 535.—It may be granted to all such as may be possessed of an estate, even to communities or corporations.

SECTION II.—*Of the Rights of the Usufructuary*

ART. 536.—All kinds of fruits, natural, cultivated or civil, produced, during the existence of the usufruct, by the things subject to it, with the exception of the children of slaves, belong to the usufructuary.

19 L. 509; 3 A. 600; 6 A. 634; See 10 L. 92.

ART. 537.—Natural fruits are such as are the spontaneous produce of the earth; the produce and increase of cattle, and the children of slaves are likewise natural fruits.

The fruits, which result from industry bestowed on a piece of ground, are those which are obtained by cultivation.

Civil fruits are rents of real property, the interest of money and annuities.

All other kinds of revenue or income derived from property by the operation of the law or private agreement, are civil fruits.

6 A. 634.

ART. 538.—The natural fruits, or such as are the produce of industry, hanging by branches or by roots, at the time when the usufruct is open, belong to the usufructuary.

Fruits in the same state, at the moment when the usufruct is at an end, belong to the owner, without being obliged to compensate the other, for either work or seeds.

3 A. 459.

ART. 539.—The children of slaves subject to usufruct, who are born during its duration, belong to the owner. The usufructuary has only the enjoyment of their labor and services.

3 A. 600; 6 A. 634.

ART. 540.—Rents and income of property, interest of money and annuities, and other civil fruits, are supposed to be obtained day by day, and they belong to the usufructuary, in proportion to the duration of his usufruct, and are due to him, though they may not be collected at the expiration of his usufruct.

ART. 541.—The usufruct of a house carries with it the enjoyment of the house, of the profit which it may bring, and indeed of such furniture as is permanently fixed therein, even should the title by which the usufruct is established, make no mention of the same.

ART. 542.—If the usufruct includes things, which cannot be used without being expended or consumed, or without their substance being

changed, the usufructuary has a right to dispose of them at his pleasure, but under the obligation of returning the same quantity, quality and value to the owner, or their estimated price, at the expiration of the usufruct.

3 R. 329; 3 A. 494.

ART. 543.—If the usufruct comprehends things which, though not consumed at once, are gradually impaired by wear and decay, such as furniture, the usufructuary has, in like manner, a right to make use of them for the purposes for which they are intended, and at the expiration of the usufruct he is obliged only to restore them in the state in which they may be, provided they have not been impaired through his fault or neglect.

And even should any of these things be entirely worn out by use at the expiration of the usufruct, the usufructuary is not bound to make good the same.

3 A. 494.

ART. 544.—The usufructuary has a right to draw all the profits, which are usually produced by the thing subject to the usufruct.

Accordingly he may cut trees on land of which he has the usufruct, take from it earth, stones, sand and other materials, but for his use only, and for the amelioration and cultivation of the land, provided he act in that respect as a prudent administrator, and without abusing this right.

3 A. 494.

ART. 545.—The usufructuary has a right to the enjoyment and proceeds of mines and quarries in the land subject to the usufruct, if they were actually worked before the commencement of the usufruct; but he has no right to mines and quarries not opened.

3 A. 494.

ART. 546.—The usufructuary enjoys the increase brought by alluvion to the land of which he has the usufruct, but has no right to islands formed in a stream not navigable opposite the land; they belong to the riparian proprietors, as is prescribed in the title of things.

In like manner he has no right, not even the right of enjoyment, to the treasure which may be discovered in the land of which he has the usufruct, unless he himself has discovered it, in which case he shall only enjoy the right granted by law to such persons as find a treasure in a piece of land, the property of another person.

3 A. 494.

ART. 547.—The usufructuary enjoys the right of servitudes, ways or others due to the inheritance of which he has the usufruct; and if this inheritance is inclosed within the other lands of him who has established such usufruct, a way must be gratuitously furnished to the usufructuary by the proprietor of the land or by his heirs.

3 A. 494.

ART. 548.—The usufructuary may enjoy by himself or lease to another, or even sell or give away his right; but all the contracts or agreements which he makes in this respect, whatever duration he may have intended to give them, cease of right at the expiration of the usufruct.

3 A. 494.

ART. 549.—The usufructuary can maintain all actions against the

owner and third persons, which may be necessary to insure him the possession, enjoyment and preservation of his right.

3 A. 494.

SECTION III.—*Of the Obligations of the Usufructuary.*

ART. 550.—The usufructuary takes things in the state in which they are; but he cannot obtain possession of the things subject to the usufruct, without having caused to be made in presence of the owner, or after the owner has been duly summoned, if he be within the State, an inventory, with the estimated value of the estate, both movable and immovable, subject to the usufruct, by a notary public duly authorized by the judge to that effect, and in the presence of two witnesses.

If the owner be absent from the State, and is not represented by any person therein, the judge shall appoint a counsel for him to assist at the inventory.

ART. 551.—The usufructuary must give security that he will use, as a prudent administrator would do, the movables and immovables subject to the usufruct, and that he will faithfully fulfil all the obligations imposed on him by law, and by the title under which his usufruct is established.

ART. 552.—The amount of this security shall be the estimated value of the movables and slaves subject to the usufruct, according to the inventory, and such further sum as shall be fixed by the judge according to the nature of the real property subject to the usufruct, to answer for the damages which the usufructuary, or those for whom he is responsible, may commit thereon.

This security may be dispensed with, in favor of the usufructuary, by the act by which the usufruct is established.

12 R. 172; 2 A. 30.

ART. 553.—Neither the father nor mother having the legal usufruct of the estate of their children, nor the seller, nor the donor, under the reservation of the usufruct, is required to give this security.

12 R. 172.

ART. 554.—If the usufructuary sell, give away, or lease his right, he, as well as his security, is responsible for the abuse which the person to whom he has assigned his rights, makes of the things subject to the usufruct, and the damage he may commit on them.

ART. 555.—The usufructuary may, for the security required of him by law, give a special mortgage on real property of sufficient value and unencumbered, lying within the State.

12 R. 172.

ART. 556.—If the usufructuary does not give security or a special mortgage, as is prescribed in the preceding article, the immovables and the slaves subject to the usufruct shall be hired out or leased at public auction.

Sums of money, the usufruct of which has been given, shall be put out at interest on good security, with the consent of the owner, and if he refuse, by the authority of the judge.

Movables subject to the same usufruct, shall be sold at public auction, and the proceeds of the sale shall be put out at interest in the manner above prescribed.

The interest of such sums, the amount of the real rent of the estate and of the hire of slaves, and the produce of the sequestered estate, shall, in such case, belong to the usufructuary

2 A. 71; 3 A. 494.

ART. 557.—In case the usufructuary does not give security, the owner has a right to insist that such furniture as grows worse by use, be sold; that the proceeds may be placed at interest, as well as that of merchandise; and in that case the usufructuary enjoys the interest during the usufruct. Nevertheless the usufructuary may claim, and the judge may order, according to circumstances, that a part of the furniture necessary for his use be left to him, under the simple obligation of returning the same at the expiration of the usufruct.

ART. 558.—The usufructuary is bound to suffer the services, which existed on the land of which he has the usufruct, at the time his right commenced.

ART. 559.—A delay to give security does not deprive the usufructuary of the profits to which he may have a right; they are due to him from the moment that the usufruct accrued.

ART. 560.—It is the duty of the usufructuary to keep the things of which he has the usufruct, and to take the same care of them as a prudent owner does of what belongs to him.

He is accordingly answerable for such losses as proceed from his fraud, default, or neglect.

ART. 561.—The usufructuary has a right to make useful and necessary improvements and repairs on the estate subject to the usufruct, and even to make such as are not necessary, but only to suit his own convenience, provided he do not injure the estate, or change its condition. But as to buildings existing on the land at the commencement of the usufruct, he must preserve them such as they have been transmitted to him, nor can he alter their form, distribution, or destination, even to improve it, without the consent of the owner.

He has, however, the right to make openings for windows and doors in the house in which he lives, and of which he has the usufruct.

ART. 562.—The usufructuary who has an usufruct in slaves, cannot employ them in other labors than those to which they are accustomed.

ART. 563.—The usufructuary cannot finish buildings commenced by the owner, nor erect new buildings upon the land of which he has the usufruct, unless these buildings are necessary for working the land or for getting in the crops; he, however, may rebuild edifices and other works which have been destroyed or thrown down by time or accident.

The usufructuary cannot demolish or destroy what he has once built or constructed, nor take away the materials; he must abandon the whole to the owner at the end of his usufruct, without being able to claim any indemnity therefor.

It is understood that all these restrictions on the rights of the usufructuary, and others mentioned in this title of the code, only take place when there is no provision to the contrary in the act establishing the usufruct.

ART. 564.—The usufructuary is liable to all the necessary expenses for the preservation and working of the estates subject to the usufruct: and if slaves form a part of them, he must provide for their support

and clothing, for their medical attendance in sickness, and the just and necessary expenses of their children.

6 A. 634.

ART. 565.—The usufructuary is bound to make such repairs only as are indispensably necessary for keeping the estate subject to the usufruct in good order.

Repairs extraordinary are to be made by the owner himself, unless such repairs have become necessary in consequence of the usufructuary's neglect to make the repairs for keeping the property in good order, since the usufruct has been acquired by him, in which case the usufructuary is bound to make such extraordinary repairs.

ART. 566.—Extraordinary repairs are those of the principal walls and vaults, and the replacing of beams and roofs *in toto*, and the reconstruction of a levee entirely destroyed or carried away.

All others are ordinary repairs.

ART. 567.—The usufructuary can be compelled to make, during the time of his usufruct, the repairs which he is bound to make, the same to be determined by experts, and under the penalty of being responsible to the owner for all damages caused by his default.

ART. 568.—If between the time the usufruct commences, and the time the usufructuary is put in possession, the owner makes any necessary repairs, which the usufructuary would have been bound to make, the former has the right to claim of the usufructuary the price thereof, and may retain the possession of the things subject to the usufruct, until the price is reimbursed.

ART. 569.—The usufructuary can release himself from the repairs which he is bound to make, and even from the other charges of the usufruct, by abandoning it, even when the owner has instituted a suit against him to compel him to make them or bear the expenses of them, and though the usufructuary be condemned in such suit.

But the abandonment will not have the effect of releasing the usufructuary from the charges of the enjoyment which he has already had of the usufruct, nor from the accountability for the damages which he, or persons for whom he is responsible, may have caused to it.

ART. 570.—The usufructuary has no action against the owner to compel him to make the extraordinary repairs, which the latter is bound to make. The usufructuary, on the refusal of the owner to make them, may advance the money necessary to complete them, and shall be reimbursed by the owner or his heirs, at the expiration of the usufruct, they not being included in the improvements, which he is obliged to abandon to the owner.

ART. 571.—Neither the owner nor the usufructuary is bound to build again what has fallen to ruin, owing to its antiquity, or has been destroyed by chance, when the ruin is total and entire; if it be only partial, it forms the subject of ordinary repairs.

Nevertheless, if the owner wishes to rebuild what has been destroyed, or to make the extraordinary repairs for which he is bound, the usufructuary is bound to permit him, but in the manner the least inconvenient and onerous to himself, and he may prescribe to the owner a reasonable delay for the performance of the work.

ART. 572.—The usufructuary is liable, during his enjoyment, to all

the annual charges, to which the things subject to the usufruct may be liable.

He is obliged to pay all taxes and contributions imposed on the property subject to the usufruct, as well as all ground rents which may have been charged upon the property, previous to the commencement of the usufruct.

The usufructuary is also bound, during his enjoyment to cause to be made and repaired the roads, bridges, ditches, levees, and the like, for which the estate of which he has the usufruct, may be liable.

ART. 573.—With respect to extraordinary or temporary charges, which may be imposed on things subject to the usufruct during its pendency, the usufructuary is bound to support them, unless they are of a nature to augment the value of the property subject to the usufruct.

In this last case the usufructuary is bound to pay them, and shall be reimbursed by the owner at the termination of the usufruct, for the capital expended only.

ART. 574.—The legacy of an annuity or alimony left by a testator, is to be wholly acquitted by the universal heir or legatee of the usufruct, and must be acquitted by the heir or legatee on an universal title, in proportion to his enjoyment, without any claim whatever to reimbursement on their part.

ART. 575.—The usufructuary on a particular title is not bound to pay the debts for which the estate is mortgaged; if he be compelled to pay them, he has his action against the owner, subject to the provisions contained in the title of *donations inter vivos, and mortis causa*.

8 A. 175.

ART. 576.—The universal usufructuary, or usufructuary under an universal title, whose usufruct has been constituted by an act *inter vivos*, in good faith and at a time not suspicious, is not bound for the debts of the owner, nor can he be sued for them, unless some part of the property subject to the usufruct be mortgaged for the payment of these debts, because with reference to the owner the usufructuary acquires under a particular title.

ART. 577.—The universal usufructuary, or usufructuary under an universal title, whose usufruct has been constituted by an act of last will, is not directly bound for the debts of the testator, that is to say, the creditors of the succession have no action against him to force him to discharge the debts out of his own estate, saving their rights to cause to be seized the effects of the succession, and to proceed against the heir of the testator to obtain payment.

ART. 578.—The heir of the testator who has bequeathed away the usufruct of his property, whether universally or under an universal title, can, when the creditors of the succession sue him, sell a part of the property subject to the usufruct, sufficient to yield the sum necessary for the discharge of the debts, in proportion to the sum for which the property subject to the usufruct is bound, if the usufructuary will not make an advance of this sum, as is mentioned in the following articles.

8 A. 175, 459; 4 A. 395, 359.

ART. 579.—If the legacy of the usufruct includes all the property of the testator, and the universal usufructuary will advance the sum necessary to discharge the debts of the succession, the capital shall be

returned to him at the expiration of the usufruct without interest; but if he will not make this advance, the heir has the choice of making the necessary advance himself for which the usufructuary shall allow him interest for the period of the usufruct, or to sell a part of the property subject to the usufruct, as stated in the preceding article.

3 A. 175, 489; 4 A. 389.

ART. 580.—If, on the contrary, the legacy includes only a certain proportion of the property of the testator, or the whole of a certain kind of property, the usufructuary under an universal title, is bound only to contribute with the heir to the payment of the debts of the succession.

ART. 581.—To establish this contribution, the value of the property subject to the usufruct, and that of the property remaining to the heir, is estimated, and the sum which they are each bound to contribute to the payment of the debts, is fixed in proportion to this valuation.

After which, if the usufructuary will make an advance of the sum which he is bound to contribute, the capital must be returned to him without interest at the termination of the usufruct, but if he will not, the heir has the choice, either to pay this sum, in which case the usufructuary must pay him interest during the period of the usufruct, or to sell a part of the property subject to the usufruct, sufficient to meet the sum which the usufructuary is bound to contribute.

ART. 582.—Usufructuaries, with the exception of fathers and mothers, as is hereafter provided, are bound to pay no costs, but such as result from law-suits concerning the enjoyment of the property subject to their usufruct, and to judgments which may have been given in such suits.

Nevertheless, in suits instituted for the recovery of the thing subject to the usufruct against the owner, the expenses must be divided between the usufructuary and him.

ART. 583.—Fathers and mothers who enjoy the legal usufruct of the property of their children, are bound to support the expenses of all suits, concerning that property, in the same manner as if they were the owners of it.

ART. 584.—The usufructuary who loses, by non-usage on his part, a service belonging to the property subject to his usufruct, is responsible for it to the owner. He is also responsible to the owner, if he permits a service to be acquired on the property by prescription.

ART. 585.—If, during the period of the usufruct, a third person makes encroachments on the estate, or violates, in any other way, the rights of the owner, it is the duty of the usufructuary to give information of the same to the owner, and if he fails to do it, he shall be answerable for all damages which may result to the owner, as he would be for injuries committed by himself.

ART. 586.—If the usufruct consists of one head of cattle, which dies without any neglect on the part of the usufructuary, he is not bound to return another, or to pay the estimated value of the same.

10 R. 46.

ART. 587.—If a whole herd of cattle subject to the usufruct, dies owing to some accident or disease, without any neglect on the part of the usufructuary, he is bound only to return the owner the hides of such cattle, or the value of such hides.

If the whole herd does not die, the usufructuary is bound to make good the number of dead out of the new-born cattle, as far as they go.

10 R. 46.

ART. 588.—The usufructuary is not bound to return other slaves in the stead of such as died during his enjoyment, nor to pay their estimated value, unless they died through his fraud or neglect.

ART. 589.—At the expiration of the usufruct, the usufructuary has no right to claim any compensation for the improvements which he contends he has made, although the value of the thing may have been increased by such improvements.

The usufructuary is bound at the expiration of his usufruct, to abandon, without compensation, not only the buildings and other works which he may have constructed upon the property, whether they have or have not foundations in the soil, but all other movable things which he may have attached to it permanently.

Nevertheless, he or his heirs may take away the looking-glasses, pictures, statues and other ornaments, which he may have placed there, and which are fastened by plaster, lime or cement, but under the obligation of re-establishing the premises in their former situation.

ART. 590.—The usufructuary may set off against the damages which have been caused to the property of which he has the usufruct, the improvements which he has been obliged to abandon to the owner, provided the latter be of the description of those which by law he was authorized to make.

ART. 591.—The undertaker or workman who has made, at the instance of the usufructuary, any building, work or improvement on the property, and who is unpaid at the expiration of the usufruct, preserves his privilege on the same, and can enforce it against the owner under the modifications prescribed in the following articles.

ART. 592.—If the works consisted in repairs, which the usufructuary was bound to make, or in buildings which he was authorized by law to make, the owner shall be obliged to pay what remains due to the workman, reserving always his recourse against the usufructuary or his heirs.

If, on the contrary, the works consisted of extraordinary repairs, which the owner was bound to make, he is obliged to pay the price to the workman, without any recourse against the usufructuary or his heirs.

ART. 593.—If the works performed were not of the description of those which the usufructuary was authorized by law to make, the owner may retain them on paying the price of them to the workman, or he may oblige the usufructuary, or his heirs, to remove them at their expense, and in that case the workman will have recourse only against the usufructuary and his heirs, for the payment of the price of his work.

SECTION IV.—*Of the Obligations of the Owner.*

ART. 594.—The owner of the thing subject to the usufruct is bound to deliver it to the usufructuary, or to suffer him to take possession of the same.

ART. 595.—He must neither interrupt, nor in any way impede the

usufructuary in the enjoyment of the usufruct, or in any manner impair his rights.

ART. 596.—He is not at liberty, either before or after the delivery of the thing, to make any alteration on the premises or things subject to the usufruct, whereby the condition of the usufructuary may become worse, although the estate itself may be bettered by them.

Hence he cannot raise an existing building, nor cause one to be erected in a place where there was none, unless it be with the consent of the usufructuary. He may still less cut down any trees of a wood, demolish a building, or make any other alteration to the injury of the usufructuary; and if he does, he shall be bound to make good the losses and damages which may result.

ART. 597.—The owner of an estate subject to the usufruct, cannot create any new servitude thereon, unless it be done in such a manner as to be no injury to the usufructuary.

ART. 598.—If the usufructuary cannot have the enjoyment, because of some obstacle which the proprietor is bound to remove, the latter shall make good the losses and damages, which are sustained by the non-enjoyment, as if there be an eviction or any other disturbance against which the proprietor is bound to warrant, or if he refuses the usufructuary any necessary servitude, which he is bound to let him enjoy.

ART. 599.—The proprietor is not bound to rebuild or repair that which happens to be demolished or damaged at the time that the usufruct is acquired, unless it happened by his fraud, or unless he was obliged by the title of the usufruct to put the property in good order.

ART. 600.—The owner may mortgage, sell or alienate the thing subject to the usufruct, without the consent of the usufructuary, but he is prohibited from doing it in such circumstances, and under such conditions as may be injurious to the enjoyment of the usufructuary.

SECTION V.—*How Usufruct expires.*

ART. 601.—The right of the usufruct expires at the death of the usufructuary.

ART. 602.—The legacy made to any one of the revenues of a property, is a kind of usufruct, which also ceases and becomes extinguished by the death of the legatee, if the contrary has not been expressly stipulated.

It is the same with all annual legacies as pensions of alimony and the like.

ART. 603.—If the title of the usufruct has limited the right to it to commence or determine at a certain time, or in the event of a certain condition, the right does not commence or determine, till the condition happens or the time elapses.

ART. 604.—If the usufructuary is charged to restore the usufruct to another person, his right to the usufruct expires, whenever the time for making such restitution arrives.

ART. 605.—The usufruct granted until a third person shall arrive at a certain age, lasts until that time, although the third person should die before the age fixed on.

ART. 606.—The usufruct left to a surviving wife, until her dowry

be refunded, continues until the whole of it, capital and interest, is paid, unless the default of payment proceeds from her act.

If there be several heirs of the husband and one of them has paid what he owes of the dowry, the usufruct terminates for his portion.

ART. 607.—The usufruct which is granted to corporations, congregations or other companies, which are deemed perpetual, lasts only thirty years.

If these corporations, congregations or other companies are suppressed, abolished or terminate in any other manner, the usufruct ceases and becomes united with the ownership.

ART. 608.—The usufruct expires before the death of the usufructuary, by the loss, extinction or destruction of the thing subject to the usufruct.

Thus the usufruct, which is established upon a building, expires, if the building is destroyed by fire or any other accident, or if it falls down through the decay of years.

In this case the usufructuary would not even have the usufruct of the materials of the building, nor of the place in which it stood; for the usufruct is to be restrained to what is specified in the title. But if the usufruct be assigned upon an estate of which the building is a part, the usufructuary shall enjoy both the soil and the materials.

ART. 609.—If it happens that a part of the house be destroyed, and that another part of it remains, the usufruct will be preserved of that part of the house which remains, and of the place on which the part of the house which is destroyed stood, for such place makes a part of the house, and is an accessory to the part of it that remains.

ART. 610.—The thing subject to the usufruct is considered as lost, when it undergoes from accident such a change in its form, that it can no longer be applied to the use for which it was originally destined. Therefore the usufruct of a field or lot is extinguished, if one or the other be so covered with water by an inundation, that it becomes changed into a pond or swamp. But the usufruct revives if the inundation ceases, and the waters, on retiring, leave the land uncovered and in its former condition.

ART. 611.—The changes made by the testator in the thing, the usufruct of which he has bequeathed, after having so disposed of it, do not produce the extinction of the usufruct, unless the legacy by which the usufruct is established is considered as revoked, according to the rules prescribed on this subject, in the title of *donations inter vivos and mortis causa*.

ART. 612.—Although the thing subject to the usufruct may be sold by the proprietor, or by his creditors, upon an order of seizure, this sale makes no alteration in the right of the usufructuary, who continues to enjoy the same, unless he has formally renounced it; but if the thing subject to the usufruct was mortgaged by the person who granted such usufruct, before he granted it, the usufructuary may be evicted of his right in consequence of the claim of the mortgage creditors; but in that case, the usufructuary has his action against the proprietor of the thing upon which the usufruct was assigned, as is provided in the third section of the present title. In the same manner the usufructuary may be deprived of his usufruct by the seizure and sale which may be made of the same by his own creditors.

ART. 613.—The usufruct may be forfeited likewise by the non-usage of this right by the usufructuary, or any person in his name, during ten years, if the parties be present, and twenty years if they be absent, whether the usufruct be constituted on an entire estate, or only a divided or individual part of an estate.

ART. 614.—The usufruct is extinguished by the usufruct and the ownership being vested in one and the same person, that is, when the owner acquires the usufruct, or when the usufructuary acquires the naked ownership. The reason is that no services can be due by a thing to the owner of such thing.

ART. 615.—If the usufructuary acquires the naked ownership, the usufruct is thereby so extinguished, that if afterwards he loses the ownership, the entire ownership is lost to him, and the usufruct does not revive, unless the title by which he acquired the ownership be annulled for some previously existing defect, or some vice inherent in the act; for in that case the usufructuary never having been the owner, no consolidation has taken place, and the usufruct continues.

ART. 616.—The usufruct may cease by the abuse which the usufructuary makes in his enjoyment, either in committing waste on the estate, or in suffering it to go to decay, for want of repairs, or in abusing in any other manner the things subject to the usufruct.

In such cases the judge may, according to circumstances, decree the absolute extinction of the usufruct, or order that the owner shall re-enter into the enjoyment of the property subject to the usufruct, on condition that he shall pay annually to the usufructuary or his representatives until the usufruct expires, a sum which shall be fixed on by the judge, in proportion to the value of the property subject to the usufruct.

ART. 617.—The usufructuary may prevent the re-entry of the owner in case of damage committed by the former on the property subject to the usufruct, by offering to make the necessary repairs, and giving a sufficient security that he will make them, which he is bound to make, within a certain fixed time.

ART. 618.—The creditors of the usufructuary may intervene in all suits which arise between him and the owner on this subject, for the preservation of their rights, and may prevent the expulsion of the usufructuary by offering to repair the damages committed, and to give security for the future.

ART. 619.—The creditors of the usufructuary can cause to be annulled any renunciation which he may have made of his right to their prejudice, whether it be accompanied with fraud or not, and they are permitted to exercise all the rights of their debtor in this respect.

In all cases the renunciation of the usufructuary cannot be inferred from circumstances; it must be express.

ART. 620.—When the usufruct has expired, the thing which was subject to it, returns to and becomes again incorporated with the ownership, and from that time the person who had only the bare ownership, begins to enter into a full and entire ownership of the thing.

Nevertheless, the usufructuary or his heirs have the right to retain possession of the thing subject to the usufruct, until they have been

fully repaid for all expenses and advances for which they have, by law, recourse against the owner or his heirs.

CHAPTER II.

OF USE AND HABITATION.

ART. 621.—Use is the right given to any one to make a gratuitous use of a thing belonging to another, or to exact such a portion of the fruits it produces, as is necessary for his personal wants and those of his family.

ART. 622.—The right of habitation is the right of dwelling gratuitously in a house, the property of another person.

ART. 623.—The right and use of habitation is established and extinguished in the same manner as the usufruct.

ART. 624.—The person having the use, if he be in possession of the thing affected with his right, as is said hereafter, and he who enjoys the right of habitation, are bound to furnish security, and to make an inventory, in the same manner as the usufructuary, and under the rules, exceptions and restrictions established on this subject in the chapter of *usufruct*.

ART. 625.—But the person having the use is not bound to give security nor to make an inventory, if the thing remains in the possession of the owner, and his right is confined to exacting out of the fruits produced by the thing what is necessary for his personal wants and those of his family; for in relation to these fruits, he is not bound to make any restitution.

ART. 626.—The rights to use and habitation are regulated by the title which has established them, and receive accordingly a more or less extensive sense, it being well understood that these conventions do not exceed the limits of the laws on use and habitation; if they do, they create other rights.

Thus a right to receive the fruits of a property and to sell and dispose of them freely, would be a right of usufruct, and all the laws concerning usufruct would be applicable to it.

ART. 627.—If the title be silent with respect to the extent of the right, the rights to use and habitation shall be determined by the following rules.

ART. 628.—That which distinguishes the usufruct of a property from the use of it, is this, that the enjoyment of the usufructuary is not confined to what is necessary for his consumption, but he takes all the fruits, and can dispose of them as he pleases.

The person, on the other hand, who has only the use of an estate, has a right only to such fruits as may be necessary for his daily wants and those of his family.

But he may claim so much of those fruits as may be necessary to supply the wants of the woman he has married, and of his children born since the use has been granted to him.

ART. 629.—He who has the use of the fruits of an estate cannot go upon the estate to exercise his rights, still less is he permitted to live

there, unless he have thereon a right of habitation; he has only an action against the owner to obtain from him such of the fruits as may be necessary for his daily wants and those of his family.

He who has the use may therefore cause to be fixed by the judge from time to time, the proportion of fruits which he has a right to exact from the owner of the property; and this must be determined according to the condition of him who has the use, and the fortune of him who conferred the right, if the title be not explicit on this subject, and according to the increase or diminution of the family of him who has the use.

ART. 630.—The right of use of a house and that of habitation being alike, are subject to the same rules.

ART. 631.—But he who has the use of one or more slaves, has the right to enjoy their service for his wants and those of his family.

ART. 632.—He who has the use of a herd of cattle cannot make any other use of the same than by taking the milk necessary for his daily use and that of his family.

ART. 633.—He who has the use of such things as cannot be used without being expended or consumed, as money, provisions or liquors, has a right to use such things as the usufructuary may, and on the same terms.

Movables which, although not consumed entirely, are gradually worn out by use, such as linen, furniture, ships or boats, are governed by the same rule.

ART. 634.—There is this difference between the person who has the use and the usufructuary, that the person, who has the use, can neither transfer, let, nor give his right to another.

ART. 635.—The right of the person, who has the use, is not only for one or more years, but it lasts during the life of such person, if the title upon which this right is grounded does not otherwise provide.

ART. 636.—He who has a right to habitation in a house, may reside there with his family, though he may not have been married at the time this right was granted to him.

ART. 637.—The right of habitation is confined to what is necessary for the habitation of the person and of the family of the person to whom the right of use or habitation is granted.

But nothing prevents him, who enjoys the right of habitation, from receiving in the house, or the part of it which has been assigned to him, friends, guests or even boarders, provided he inhabits it himself.

ART. 638.—The word *family*, made use of in this chapter, is to be understood of the wife, children and servants of the person to whom the right of use or habitation is granted.

ART. 639.—The right of habitation can neither be transferred, let nor given to any one else; it is, as well as the use, exclusively a personal right.

ART. 640.—He who has the use, and he to whom the right of habitation has been granted, are bound to use those things of which they have the possession and enjoyment, as prudent administrators would do, and to restore them to the owners at the expiration of their terms, in the condition they received them, and not injured by their neglect or fraud.

ART. 641.—If the person who has the use, consumes all the fruits of the estate for his wants, or if he occupies the whole house, he is bound to defray the expenses of cultivation and plantation work: he is liable to the ordinary repairs, to the payment of taxes, and to the other annual charges in the same manner as the usufructuary is.

But if he receives only a part of the fruits of the estate, or if he occupies only a part of the house, he contributes his share of said expenses, in proportion to what he enjoys.

TITLE IV

OF PREDIAL SERVITUDES OR SERVITUDES OF LAND.

CHAPTER I.

GENERAL PRINCIPLES.

ART. 642.—All servitudes which affect lands may be divided into two kinds, personal and real.

Personal servitudes are those attached to the person for whose benefit they are established, and terminate with his life. This kind of servitude is of three sorts, usufruct, use and habitation;

Real servitudes, which are also called *predial or landed servitudes*, are those which the owner of an estate enjoys on a neighboring estate for the benefit of his own estate.

They are called *predial or landed servitudes*, because being established for the benefit of an estate, they are rather due to the estate than to the owner personally.

This kind of servitude forms the subject of the present title.

ART. 643.—A real or predial servitude is a charge laid on an estate for the use and utility of another estate belonging to another proprietor.

ART. 644.—From the definition contained in the preceding article it follows, that to establish a predial or real servitude, there must first be two different estates, one of which owes the servitude to another.

If then a stipulation be made of a servitude in favor of a person, and not in favor of an estate, the obligation will not be null on that account, but it will not create a real servitude.

ART. 645.—It is necessary, in the second place, that these two estates belong to two different persons, for if they are both the property of one person, the application which the owner makes of one to the advantage of the other, is not called a servitude, but a disposition of the owner, which will be explained hereafter.

ART. 646.—It is necessary, in the third place, that the servitude have for its object the use or benefit of the estate, in favor of which it is established.

But it is not necessary that this benefit exist at the time of the con-

tract; a mere possible convenience or remote advantage is sufficient to support a servitude.

In order to render a servitude null, it is not enough that it should appear to be useless, it must be shown that at no time, and under no circumstances, it can possibly become useful to the person in whose favor it is enacted.

ART. 647.—Predial servitudes, being due from one estate to another it commonly happens that these estates are in the same neighborhood.

Nevertheless, this neighborhood is not a condition essential to the existence of the servitude.

Nor is it necessary that the estate, which owes the servitude, and that to which it is due, be contiguous; it suffices that they be sufficiently near, for one to derive benefit from the service in the other.

ART. 648.—A servitude is an incorporeal right which cannot exist without the estate to which it belongs, and of which it is an accessory.

ART. 649.—Servitudes being essentially due from one estate to another for the advantage of the latter, they remain the same as long as no change takes place in regard to the two estates, whatever change may take place in the owners.

ART. 650.—Servitude is a right so inherent in the estate to which it is due, that the faculty of using it, considered alone and independent of the estate, cannot be given, sold, let, or mortgaged without the estate to which it appertains, because it is a servitude which does not pass to the person but by means of the estate.

ART. 651.—One of the characteristics of a servitude is, that it does not oblige the owner of the estate subject to it to do any thing, but to abstain from doing a particular thing, or to permit a certain thing to be done on his estate.

ART. 652.—The rights of servitudes, considered in themselves, are not susceptible of division, neither real nor imaginary. It is impossible that an estate should have upon another estate part of a right of way, or of view, or any other right of servitude, and also that an estate be charged with a part of servitude.

The use of a right of servitude may be limited to certain days or hours; but thus limited it is an entire right, and not part of a right.

From thence it follows that a servitude existing in favor of a piece of land is due to the whole of it, and to all the parts of it, so that if the land be sold in parts, every purchaser has the right of using the servitude *in toto*.

ART. 653.—Though the right of servitude be indivisible, and must be established for the whole, and not for a part, nothing prevents the advantage resulting from it from being divided, if it be susceptible of division, as for example, the right of taking a certain number of loads of earth from the lands of another, or of sending to pasture a certain number of animals on the land of another.

ART. 654.—The part of an estate upon which a servitude is exercised, does not cease to belong to the owner of the estate; he who has

the servitude has no right of property in that part, but only the right of using it.

Hence the soil of public roads belongs to the owners of the land on which they are made, though the public has the use of them; the owners of the land cannot change the roads except in conformity with the regulations of the police established on this subject.

ART. 655.—Servitudes arise either from the natural situation of the place, from the obligations imposed by law, or from contract between the respective owners.

CHAPTER II.

OF SERVITUDES WHICH ORIGINATE FROM THE NATURAL SITUATION OF THE PLACE.

ART. 656.—It is a servitude due by the estate situated below to receive the waters which run naturally from the estate situated above, provided the industry of man has not been used to create that servitude.

The proprietor below is not at liberty to raise any dam, or to make any other work, to prevent this running of the water.

The proprietor above can do nothing whereby the natural servitude due by the estate below may be rendered more burdensome.

12 L. 504; 13 L. 54; 14 L. 161; 5 A. 424.

ART. 657.—He whose estate borders on running water, may use it as it runs, for the purpose of watering his estate, or for other purposes.

He through whose estate water runs, whether it originates there or passes from lands above, may make use of it, while it runs over his land; but he cannot stop nor give it another direction, and is bound to return it to its ordinary channel where it leaves his estate.

ART. 658.—Every proprietor has a right to make an inclosure around his lands.

ART. 659.—He may compel his neighbors to fix and mark the limits of their estates which are contiguous to his.

The limits are established, and boundary stones or posts placed at their joint expense.

CHAPTER III.

OF SERVITUDES IMPOSED BY LAW.

ART. 660.—Servitudes imposed by law are established either for the public or common utility, or for the utility of individuals.

3 L. 557; 16 L. 55; See 18 L. 295.

ART. 661.—Services imposed for the public or common utility, relate to the space which is to be left for public use by the adjacent proprietors on the shores of navigable rivers, and for the making or repairing of levees, roads, and other public or common works.

All that relates to this kind of servitude is determined by laws or particular regulations.

3 L. 557; 3 A. 482; 6 A. 77.

ART. 662.—The law imposes upon the proprietors various obligations towards one another, independent of all agreements; and those are the obligations which are prescribed in the following articles.

3 A. 449; See 17 L. 389.

ART. 663.—Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him.

See 17 L. 389.

ART. 664.—Although one be not at liberty to make any work by which his neighbor's buildings may be damaged, yet every one has the liberty of doing on his own ground whatsoever he pleases, even although it should occasion some inconvenience to his neighbor.

Thus he who is not subject to any servitude originating from a particular agreement in that respect, may raise his house as high as he pleases, although by such elevation he would darken the lights of his neighbor's house, because this act occasions only an inconvenience, but not a real damage.

ART. 665.—If the works or materials for any manufactory or other operation cause an inconvenience to those in the same or in the neighboring houses, by diffusing smoke or nauseous smell, and there be no servitude established by which they are regulated, their sufferance must be determined by the rules of the police, or the customs of the place.

ART. 666.—Every one is bound to keep his buildings in repair, so that neither their fall, nor that of any part of the materials composing them, may injure the neighbors or passengers, under the penalty of all losses and damages which may result from the neglect of the proprietor in that respect.

ART. 667.—When a building threatens ruin, the neighbor has a right of action against the proprietor to compel him to cause such a building to be demolished or propped up. In the mean time, if he incurs the danger of any damage by its fall, he may be authorized to make the necessary works, for which he shall be reimbursed after the damage shall have been ascertained by persons of the art.

ART. 668.—The councils and other municipal bodies of cities and other incorporated places of this State, are authorized to make such regulations as they may think proper, to determine the mode of proceeding in case of fire, when it becomes necessary in order to arrest its progress, to pull down houses which have taken fire, or even those which the fire has not reached.

But in this case the proprietors whose houses have been pulled down before they have taken fire, shall have a right to an indemnification in proportion to their loss, which indemnification shall be paid by the corporation of the city or place where the conflagration has taken place, by means of an extraordinary and proportional tax, which shall be laid to this effect upon all proprietors of houses of the said place, or in any other manner, from the funds of the corporation.

ART. 669.—He who builds either above or below his soil, adjoining the property of his neighbor, is bound to build in a perpendicular line.

ART. 670.—The other particular services imposed by law, relate to the following objects:

To boundary walls, inclosures, and ditches;
 To cases where it is necessary to have double or counter walls;
 To the right of lights on the property of a neighbor;
 To carrying off water from roofs;
 And to the right of passages.

3 A. 440; See 11 L. 394; 16 L. 551.

SECTION I.—*Of Walls, Fences, and Ditches in common.*

ART. 671.—He who first builds in the cities, towns, or suburbs of this State, in a place which is not surrounded by walls, may rest one half of his wall on the land of his neighbor, provided he builds with stones or bricks at least as high as the first story, and not in frame or otherwise; and provided the whole thickness of this wall do not exceed eighteen inches, not including the plastering, which must not be more than three inches.

But he cannot compel his neighbor to contribute to the raising of this wall.

1 A. 140; 3 A. 440; See 2 L. 531.

ART. 672.—If the neighbor be willing to contribute for his half to the building of the wall thus raised, then this wall is a wall in common between the proprietors.

The neighbor who has even refused to contribute to the raising of this wall, preserves still a right of making it a wall in common, by paying to the person who has made the advance, the half of what he has laid out for its construction, according to the rules hereafter established.

1 A. 140.

ART. 673.—Every wall being a separation betwixt buildings as high as the upper part of the first story, or betwixt the yard and garden in the cities, towns, and suburbs of this State, and even any other inclosure in the fields, shall be presumed to be in common, if there be no title, proof, or mark to the contrary.

6 A. 566.

ART 674.—The repairs and building of walls in common are to be made at the expense of all who have a right to the same, and in proportion to their interest therein.

ART 675.—Nevertheless every co-proprietor of a wall in common may be exonerated from contributing to the repairs and rebuilding, by giving up his right of common, provided no building belonging to him be actually supported by the wall thus held in common.

ART. 676.—Every co-proprietor may build against a wall held in common, and cause beams or joists to be placed within two inches of the whole thickness of the wall, saving to the neighbor the right of diminishing with the chisel the length of the beam till it do not exceed the half of the thickness of the wall, in case he himself should wish to fix beams in the same place, or to build a chimney against it.

ART. 677.—Every co-proprietor is at liberty to increase the height of the wall held in common, but he alone is to be at the expense of raising it, and of repairing and keeping the part above the height of the wall in common in good order, and besides he alone is liable for all expenses arising from its being raised higher according to its value.

17 L. 389; 6 A. 566.

ART. 678.—If the wall held in common cannot support the additional weight of raising it, he who wishes to have it made higher, is bound to rebuild it anew entirely at his own expense, and the additional thickness must be taken from his property.

17 L. 389; 6 A. 566.

ART. 679.—The neighbor who did not contribute to the raising of the wall held in common, may cause the raised part to become common by paying one-half the expense of such raising, and the value of the half of the soil employed for the additional thickness, if there is any.

13 L. 271.

ART. 680.—Every proprietor enjoying a wall has, in like manner, the right of making it a wall in common, in whole or in part, by reimbursing to the owner of the wall one-half of its value, or the half of the part which he wishes to hold in common, and one-half the value of the soil upon which the wall is built, if the person who has built the wall has laid the foundation entirely upon his own estate.

1 A. 140; 3 A. 165.

ART. 681.—Neither of the two neighbors can make any cavity within the body of the wall held by them in common, nor can he affix to it any work without the consent of the other, or without having, on his refusal, caused the necessary precaution to be used, so that the new work be not an injury to the rights of the other, to be ascertained by persons skilled in building.

17 L. 389; See Arts. 1805, 1811.

ART. 682.—Every one has a right to compel his neighbor within the cities, towns and suburbs of this State, to contribute to the making and repairing of the fences held in common, by which their houses, yards and gardens are separated, which shall be made in the manner which is or may be prescribed by the regulations of the police on this subject.

And if one of the proprietors has been alone at the expense of making the inclosures held in common, he may compel the other to make it in his turn, and the presumption shall be that the inclosure was made by him on whose side it is nailed, unless there exists a voucher or proof to the contrary.

ART. 683.—In the country the common boundary inclosures between two estates are made at the expense of the adjacent estates, if the estates are inclosed; otherwise, the estate which is not inclosed, is not bound to contribute to it.

ART. 684.—Every fence, which separates rural estates, is considered as a boundary inclosure, unless there be but one of the estates inclosed, or unless there be some title or proof to the contrary.

ART. 685.—Every ditch between two estates shall be supposed held in common, unless there be a voucher or proof to the contrary.

ART. 686.—A ditch held in common is to be kept at the expense of the two contiguous proprietors.

ART. 687.—Every proprietor in the cities, towns or suburbs of this State, is forbidden to plant on the boundary line which separates his estate from that of his neighbor, trees which may be of any injury whatsoever to his neighbor.

And if his neighbor suffers any damage from them, he can oblige

the owner to have them torn up or the branches of them cut off, which extend over his estate.

If the roots only extend themselves on his estate, the neighbor has the right to cut them up himself.

SECTION II.—*Of the Distance and of the Intermediary Works required for certain Buildings.*

ART. 688.—He who wishes to dig a well or a necessary, to build a chimney, or hearth, a forge, an oven, a furnace or stable, to put up shelves or to store salt or other corrosive substances near a wall, whether held in common or not, is bound to leave the distance, and cause to be made the works prescribed by the regulations of the police, in order that his neighbor be not injured thereby.

And if there be no regulations of police upon all or any of these subjects, he shall conform to the following rules, in cases which have not been foreseen.

ART. 689.—He who wishes to build a chimney or hearth against a wall held in common, is bound to make a double wall of brick or other proper materials six inches thick.

ART. 690.—He who wishes to build an oven, a forge or a furnace against the wall held in common, is bound to leave half a foot interval and vacancy betwixt such wall and that of his oven, forge or furnace, and this last wall must be one foot thick.

ART. 691.—He who wishes to dig a necessary or a well against a wall, whether held in common or not, is bound to build another wall one foot thick; and when there is a well on one side and a necessary on the other, there shall be four feet masonry betwixt the two, including the thickness on both sides; but between two wells three feet interval are sufficient.

See 18 L. 70.

SECTION III.—*Of Sights on the Property of a Neighbor.*

ART. 692.—One neighbor cannot, without the consent of the other, open any window or aperture through the wall held in common, in any manner whatever, not even with the obligation, on his part, to confine himself to lights, the frames of which shall be so fixed within the wall that they cannot be opened.

ART. 693.—No one shall build galleries, balconies or other projections on the border of an estate, so that they extend beyond the boundary line, which separates it from the adjoining estates.

SECTION IV.—*Of the Manner of carrying off Rain from the Roof.*

ART. 694.—Every proprietor is bound to fix his roof so that the rain-water fall upon his own ground, or on the public road. He has no right to cause the same to fall on his neighbor's ground.

7 L. 52.

SECTION V.—*Of the Right of Passage and of Way.*

ART. 695.—The proprietor, whose estate is inclosed, and who has no way to the public road, may claim the right of passage on the estate

of his neighbors for the cultivation of his estate, but he is bound to indemnify them in proportion to the damage he may occasion.

11 L. 394; 16 L. 55; 6 A. 118.

ART. 696.—The owner of the estate, which is surrounded by other lands, has no right to exact the right of passage from which of his neighbors he chooses.

The passage shall be generally taken on the side where the distance is the shortest from the inclosed estate to the public road.

Nevertheless, it shall be fixed in the place the least injurious to the person on whose estate the passage is granted.

16 L. 55; 3 A. 567, 697; See 11 L. 394.

ART. 697.—It is not always the owner of the land which affords the shortest passage, who is obliged to suffer the right of passage; for if the estate, for which the right of passage is claimed, has become inclosed by means of sale, exchange or partition, the vendor, coparcener or other proprietor of the land reserved, and upon which the right of passage was before exercised, is bound to furnish the purchaser or owner of the land inclosed with a passage gratuitously, and even when it has not been sold or transferred with the rights of servitude.

3 A. 567.

ART. 698.—A passage must be furnished to the owner of the land surrounded by other lands, not only for himself, his slaves and workmen, but for his animals, carts, instruments of agriculture, and every thing which may be necessary for the use and working of his land.

11 L. 394; 16 L. 55; See Arts. 695, 696.

ART. 699.—When the place for the passage is once fixed, he to whom this servitude has been granted, cannot change it, but he who owes this servitude, may change it from one place to another, in order that it may be less inconvenient to him, provided that it afford the same facility to the proprietor of the servitude.

ART. 700.—Roads are of two kinds, public and private.

3 A. 487.

ART. 701.—Public roads are those which are made use of as high roads, which are generally furnished and kept up by the proprietors of estates adjacent to them.

3 A. 487.

ART. 702.—Private roads are those which are only open for the benefit of certain individuals to go from and to their homes, for the service of their lands, and for the use of some estates exclusively.

3 A. 487; See 16 L. 55.

ART. 703.—He who from his title as owner is bound to give a public road on the border of a river or stream, must furnish another without any compensation, if the first be destroyed or carried away.

And if the road be so injured or inundated by the water, without being carried away, that it becomes impassable, the owner is obliged to give the public a passage on his lands, as near as possible to the public road, without any recompense therefor.

3 A. 487.

ART. 704.—The action of indemnification, granted against the person who claims the passage, may be barred by prescription, and the passage shall be continued, although the action in indemnification be no longer maintainable.

11 L. 394.

CHAPTER IV.

OF CONVENTIONAL OR VOLUNTARY SERVITUDES.

SECTION I.—*Of the different Kinds of Conventional or Voluntary Servitudes.*

ART. 705.—Proprietors have a right to establish on their estates, or in favor of their estates, such servitudes as they deem proper: *Provided* nevertheless, that the services be not imposed on the person or in favor of the person, but only on an estate or in favor of an estate; and provided moreover, that such services imply nothing contrary to public order.

The use and extent of servitudes thus established, are regulated by the title by which they are granted, and if there be no title, by the following rules:

ART. 706.—All servitudes are established either for the use of houses or for the use of lands.

Those of the first kind are called urban servitudes, whether the buildings to which they are due be situated in the city or in the country.

Those of the second kind are called rural servitudes.

ART. 707.—The principal kinds of urban servitudes are the following:

The right of support; that of drip; that of drain or of preventing the drain; that of view or of lights, or of preventing the view or lights from being obstructed; that of raising buildings or walls, or of preventing them from being raised; that of passage, and that of drawing water.

7 L. 52.

ART. 708.—The right of support is one by which a proprietor stipulates that his neighbor shall be bound to permit that his house or his timbers should rest on the wall of his neighbor.

In these servitudes, the owner of the estate subject to them is bound to keep his wall in a condition to bear them, unless the contrary has been agreed upon; but he may relieve himself from this charge by abandoning his wall.

The servitude, by which one is permitted to project works over the estate of his neighbor, is of the same kind.

ART. 709.—Every proprietor is bound so to construct his roofs that the rain falling on them should not fall on the land of his neighbor, but on his own or the public way.

This falling of water gives rise to the servitude of drip.

The servitude of drip is that by which any one engages to permit the waters from the roof of his neighbor to fall on his estate, or that by which any one obliges himself to suffer the waters from his own roof to fall on the estate of his neighbor.

ART. 710.—The right of drain consists in the servitude of passing water collected in pipes or canals through the estate of one's neighbor.

This servitude is different from the right of drip, because the charge it imposes is more onerous.

It is much less inconvenient to receive the rain which falls than a body of water which may carry away the land by its violence.

The contrary servitude is the right of preventing this passage of water.

ART. 711.—We understand by *view* every opening which may, more or less, facilitate the means of looking out of a building.

Lights are those openings which are made rather for the admission of light, than to look out of.

ART. 712.—Servitudes of view are of two kinds: one which confers the right of full view with the power of preventing one's neighbor from raising any buildings which obstruct it, and the other which gives a proprietor the right of preventing his neighbor from having any view or lights on the side on which their estates unite, or that he exercise these servitudes according to his title.

ART. 713.—Servitudes of lights are also of two kinds; one which gives the owner of a house the right of opening windows in a wall held in common, for the admission of light, with the right also of preventing his neighbor from raising any building which can obstruct the admission of light: and the other, which gives the right of preventing one's neighbor from opening his wall, or a wall held in common, for the admission of light from a yard, or other place, or which limits him to certain lights which are conferred by his title

ART. 714.—The right of obliging one's neighbor to raise his wall to a certain height; and, on the contrary, that of preventing one's neighbor from raising his house beyond a certain height, are also servitudes.

ART. 715.—The right of passage in cities is a servitude by which a proprietor permits his neighbor to pass through his house or lot to arrive at his own.

This servitude, to be perpetual, must be so expressed in the title; otherwise, it ceases with the person who enjoys it, and does not pass to his heirs.

ART. 716.—The right of drawing water is a servitude by which one suffers his neighbor to draw water from the well or spring he has on his land; the use of this servitude is confined to those who live in the house of the person enjoying the servitude, unless the contrary be expressed in the title.

ART. 717.—The principal rural servitudes are those of passage, of way, of taking water, of the conducting of water or aqueduct, of watering, of pasturage, of burning brick or lime, and of taking earth or sand from the estate of another.

ART. 718.—The right of passage or of way is a servitude imposed by law or by convention, and by virtue of which one has a right to pass on foot, on horseback, or in a vehicle, to drive beasts of burden or carts through the estate of another.

When this servitude results from the law, the exercise of it is confined to the wants of the person who has it.

When it is the result of a contract, its extent and the mode of using it, is regulated by the contract.

See 11 L. 394.

ART. 719.—The right of drawing water from the spring of another is also a servitude.

ART. 720.—The conducting of water or aqueduct is the right by which one conducts water from his estate through the land of his neighbor, by means of an aqueduct or ditch.

ART. 721.—The right of watering one's animals at the pond or spring of another, is also a servitude.

ART. 722.—Pasturage is the right of feeding one's cattle on the estate of another.

ART. 723.—Servitudes are either continuous or discontinuous.

Continuous servitudes are those whose use is or may be continual without the act of man.

Such are aqueducts, drain, view, and the like.

Interrupted servitudes are such as need the act of man to be exercised.

Such are the rights of passage, of drawing water, pasture, and the like.

See 11 L. 394; 14 L. 173.

ART. 724.—Again, servitudes are either visible and apparent or non-apparent.

Apparent servitudes are such as are to be perceivable by exterior works, such as a door, a window, an aqueduct.

Non-apparent servitudes are such as have no exterior sign of their existence, such for instance, as the prohibition of building on an estate or of building above a particular height.

SECTION II.—*How Servitudes are established.*

ART. 725.—The right of imposing a servitude permanently on an estate belongs to the owner alone.

ART. 726.—He who has the naked property of an estate cannot subject it to a servitude without the consent of the usufructuary, unless it be to take effect at the termination of the usufruct.

Those servitudes which do no injury to the rights of the usufructuary, such as that of not raising his house higher than it is, are excepted.

ART. 727.—It is not sufficient to be an owner in order to establish a servitude; one must be master of his rights and have the power to alienate; for the creation of a servitude is an alienation of a part of the property.

Thus minors, married women, persons interdicted, cannot establish

servitudes on their estates, except according to the forms prescribed for the alienation of their property.

ART. 728.—The husband cannot establish a servitude on the dotal property of his wife, even with her consent, unless it be expressly stipulated in the marriage contract that he shall be permitted to alienate her dotal property with her consent.

ART. 729.—An attorney in fact cannot impose a servitude on the estate intrusted to him, without a special power to that effect.

ART. 730.—Corporations can only establish servitudes on their property in the cases and with the forms in which they can alienate.

ART. 731.—The purchaser, with a reservation of redemption, may impose servitudes on the property acquired by him; but they cease if the redemption takes effect.

ART. 732.—Those who have not the full property, whose property in the estate ceases on a certain condition, or at a particular time, may establish servitudes thereon, but they cease with their rights, and those in whose favor the servitudes are established cannot avail themselves of prescription, because before that time no action for the dissolution of the servitude could be instituted against them.

ART. 733.—The usufructuary cannot establish on the estate of which he has the usufruct any charges in the nature of services, because they of necessity cease with the usufruct.

ART. 734.—The co-proprietor of an undivided estate cannot impose a servitude thereon, without the consent of his co-proprietor.

The contract of servitude, however, is not null; its execution is suspended until the consent of the co-proprietor is given.

ART. 735.—The co-proprietor who has consented to the establishment of a servitude on property held in common, cannot prevent the exercise of the servitude by objecting that the consent of his co-proprietor has not been given.

If he becomes owner of the whole estate, he is bound to permit the exercise of the servitude to which he has before consented.

ART. 736.—If the co-proprietor has established the servitude for his part of the estate only, the consent of the other owners is not necessary, but the exercise of the servitude must be suspended until his part be ascertained by a partition. In this case, he to whom the servitude has been granted, may compel the co-proprietor from whom he received it, to sue for a partition, or may sue for it himself.

ART. 737.—If in the suit for a partition it be determined that the estate be disposed of by licitation, and he who has granted the servitude becomes proprietor of the whole, the servitude then exists on the whole estate, as if he had always been the sole owner.

But if by the licitation the estate be adjudicated to any other of

the co-proprietors, the servitude becomes extinct, and the person who granted it is bound to return the price he received for it.

ART. 738.—If a co-proprietor who has established a servitude, sells his undivided portion to a person, who afterwards, by licitation, becomes owner of the whole, he is, like his vendor, bound to permit the exercise of the servitude on the whole estate.

ART. 739.—Servitudes are established by all acts by which property can be transferred, and as they are not susceptible of real delivery, the use which the owner of the estate to whom the servitude is granted, makes of this right, supplies the place of delivery.

ART. 740.—Servitudes may be established on all things susceptible of ownership, even on the public domain, on the common property of cities and other incorporated places.

ART. 741.—It is not contrary to the nature of servitudes that the same servitude should be established on several estates for the benefit of one, or that the same estate should be subject to a servitude for the benefit of several estates.

ART. 742.—By the title by which a servitude is established in favor of an estate, a servitude may also be imposed on the estate, for the benefit of the estate from which the first servitude is due.

In cases where there are reciprocal servitudes, all the rules concerning simple servitudes are applicable.

ART. 743.—A servitude may be established or acquired in favor of an estate which does not exist, or of which one is not yet the owner; but if the hope of becoming the owner be not realized, the servitude falls.

It may also be stipulated that an edifice not yet built, shall support a servitude; or, shall have the benefit of one when it is built.

ART. 744.—A servitude may be established or released for a certain part of an estate, provided the part be designated.

ART. 744.—He whose estate is encumbered with a servitude, may impose on it other servitudes of any kind, provided they do not affect the rights of him who has acquired the first.

ART. 746.—An estate being mortgaged does not prevent the owner from establishing servitudes on it, saving always to the creditor the right of demanding his debt, if the establishment of the servitude evidently depreciates the value of the estate, or of causing the estate to be sold as free from all servitudes; but the person who has acquired the servitude, shall have in such case his action for the restitution of the value of the servitude against the owner of the estate.

ART. 747.—The exercise of servitudes may be limited to certain times. Thus the right of drawing water may be confined to certain hours, the right of passage to a part of the day.

ART. 748.—Legal servitudes, and even those which result from the situation of places, may be altered by the agreement of parties, provided the public interest does not suffer thereby.

ART. 749.—Servitudes which tend to affect the free use of property,

in case of doubt as to their extent or the manner of using them, are all ways interpreted in favor of the owner of the property to be affected.

ART. 750.—Servitudes being established on estates in favor of other estates, and not in favor of persons, if the grant of the right declare it to be for the benefit of another estate, there can be no doubt as to the nature of this right, even though it should not be called a servitude.

ART. 751.—If, on the other hand, the act establishing the servitude does not declare that the right is given for the benefit of an estate, but to a person who is the owner of it, it must then be considered whether the right granted be of real advantage to the estate, or merely of personal convenience to the owner.

ART. 752.—If the right granted be of a nature to assure a real advantage to an estate, it is to be presumed that such right is a real servitude, although it may not be so styled.

Thus, for example, if the owner of a house contiguous to lands bordering on the high road, should stipulate for the right of passing through lands, without it being expressed that the passage is for the use of his house, it would be not the less a real servitude, for it is evident that the passage is of real utility to the house.

ART. 753.—If, on the other hand, the right, from its nature, is a matter of mere personal convenience, it is considered personal, and cannot be made real but by express declaration of the parties.

Thus, for example, if the owner of a house near a garden or park, should stipulate for the right of walking and gathering fruits and flowers therein, this right would be considered personal to the individual, and not a servitude in favor of the house or its owner.

But the right becomes real and is a predial servitude, if the person stipulating for the servitude, acquires it as owner of the house, and for himself, his heirs and assigns.

ART. 754.—When the right granted is merely personal to the individual, it expires with him, unless the contrary has been expressly stipulated.

SECTION III.—*How Servitudes are acquired.*

ART. 755.—Those who can establish servitudes on their lands can also acquire servitudes.

There are some persons who cannot establish servitudes, who nevertheless can acquire them; such as those who cannot exercise their rights, minors, women not authorized, administrators, tutors, husbands; for the acquisition of a servitude augments the value and convenience of an estate.

ART. 756.—He who assumes the quality of owner, and enjoys an estate as such in good or bad faith, he who acts in the name of the owner, though he have no mandate from the owner, can acquire servi-

tudes, and the person granting them cannot afterwards revoke them, for it is not to the person but to the estate they are granted.

ART. 757.—Nevertheless, in all the cases mentioned in the preceding articles, if the minor, the woman not authorized, or the owner find the contract onerous, they can annul it or refuse to execute it by renouncing the servitude.

ART. 758.—Even those who are neither owners nor representatives of the owner, and who have not expressly assumed the quality of acting in his name, may acquire a servitude for the benefit of the estate they possess, when such is the condition of the contract they make.

ART. 759.—One of the owners of property held in common may stipulate for a servitude for the benefit of the property in common, because the partnership, which exists between him and his co-proprietor, authorizes him and makes it his duty to ameliorate the property in common.

Nevertheless, the co-proprietors may refuse to avail themselves of this servitude, and allege that the acquisition of the servitude is not an act of mere administration, but an innovation on the estate, which ought not to have been made without their consent. But this exception exists only in their favor and cannot be taken advantage of by him who has granted the servitude, in order to exonerate himself from his engagement.

ART. 760.—The usufructuary may acquire a servitude in favor of an estate of which he has the usufruct, if he declare that he acts for the owner, or if he stipulates that the servitude is established in favor of all those who shall possess the estate after him; but if in the act by which the servitude is acquired, he takes merely the quality of usufructuary, without expressing at the same time that he contracts for all those who may succeed him in the possession of the estate, the right terminates with the usufruct, and the owner cannot claim a servitude, which has not attached to the estate subject to the usufruct, or which has only attached for the time of the usufruct.

ART. 761.—Continuous and apparent servitudes may be acquired by title or by a possession of ten years, if the parties be present, and twenty years if absent.

See 11 L. 354.

ART. 762.—Continuous non-apparent servitudes, and interrupted servitudes, whether apparent or not, can be established only by a title.

Immemorial possession itself is not sufficient to acquire them.

Immemorial possession is that of which no man living has seen the beginning, and the existence of which he has learned from his elders.

5 R. 16; 1 A. 407; 3 A. 166; See 11 L. 394; 14 L. 173.

ART. 763.—The use which the owner has intentionally established on a particular part of his property in favor of another part, is equal to a title, with respect to perpetual and apparent servitudes thereon.

By this is meant the disposition which the owner of two or more estates has made for their respective use.

1 A. 407.

ART. 764.—Such intention is never presumed till it has been proved that both estates, now divided, have belonged to the same proprietor, and that it is by him that the things have been placed in the situation from which the servitudes result.

ART. 765.—If the proprietor of two estates, between which there exists an apparent sign of servitude, sell one of those estates, and if the deed of sale be silent respecting the servitude, the same shall continue to exist actively or passively in favor or upon the estate which has been sold.

4 L. 312; 5 R. 16.

ART. 766.—The title by which such servitudes are established, as cannot be acquired by prescription, can be replaced only by a title, by which such servitude is acknowledged by the owner of the estate which owes the servitude, or by a final judgment condemning him to permit the exercise of the servitude.

ART. 767.—When a servitude is established, every thing which is necessary to use such servitude is supposed to be granted at the same time with the servitude.

Thus the servitude of drawing water out of a spring carries necessarily with it the right of passage.

But the passage, in this case and in all others in which it is permitted as an accessory to some or other servitude, must be made in the way the most direct, the shortest and the least inconvenient to the estate subject to the servitude.

SECTION IV.—*Of the Rights of the Proprietor of the Estate to which the Servitude is due.*

ART. 768.—He to whom a servitude is due, has a right to make all the works necessary to use and preserve the same.

14 L. 161; 3 A. 134.

ART. 769.—Such works are at his expense, and not at the expense of the owner of the estate which owes the servitude, unless the title by which it is established shows the contrary.

ART. 770.—The owner of the estate, to which the servitude is due, has the right to go on the estate which owes the servitude with his workmen, in the place where it is necessary to construct or repair the works necessary for the exercise of the servitude, to deposit there the materials necessary for those works and the rubbish made thereby, under the obligation of causing the least possible damage and of removing them as soon as possible.

Nevertheless, if in the act establishing the servitude, it is said that the owner to whom it had been granted cannot construct works in order to exercise it, or can only construct them in a certain manner, this agreement must be observed.

14 L. 161; 3 A. 134.

ART. 771.—Even in the cases where the owner of the estate which owes the servitude, is bound by the title to make the necessary works for the use and preservation of the servitude, at his own expense, he may always exonerate himself by giving up the estate which owes the servitude to the owner of the estate to which it is due.

ART. 772.—If the estate for which the servitude has been established comes to be divided, the servitude remains due for each portion, provided that no additional burden accrue thereby to the estate which is subject to the servitude.

Thus, for instance, in case of a right of passage, all the proprietors are bound to exercise that right through the same place.

ART. 773.—The proprietor of the estate which owes the servitude can do nothing tending to diminish its use, or to make it more inconvenient.

Thus he cannot change the condition of the premises, nor transfer the exercise of the servitude to a place different from that on which it was assigned in the first instance.

Yet if this primitive assignment has become more burdensome to the proprietor of the estate which owes the servitude, or if he is thereby prevented from making advantageous repairs on his estate, he may offer to the proprietor of the other estate a place equally convenient for the exercise of his rights, and the owner of the estate to which the servitude is due cannot refuse it.

ART. 774.—On the other hand, he who has a right of servitude, can use it only according to his title, without being at liberty to make either in the estate which owes the servitude, or in that to which the servitude is due, any alteration by which the condition of the first may be made worse.

ART. 775.—If the manner in which the servitude is to be used is uncertain, as if the place necessary for the exercise of the right of passage is not designated in the title, the owner of the estate which owes the servitude, is bound to fix the place where he wishes to be exercised.

1 R. 321; 5 A. 577.

ART. 776.—If the title by which a passage is granted does not designate its breadth, nor the manner in which it is to be used, whether on foot, or horseback, or with carriages, the use, which the person to whom the servitude is granted, previously made of it, will serve to interpret the title.

If there was no such use made of it before, the probable intention of the parties must be considered, and the purpose for which the passage is granted.

If these circumstances can afford no light, it must be decided in favour of the land which owes the servitude, and a foot passage must be conceded eight feet wide, where it is straight, and ten feet wide where turns.

ART. 777.—If the passage be agreed upon, without the time or the hour being fixed, it is necessary to make a distinction; if the passage be through a place not closed, it may be used at any hour and even in the night; for at any hour a person may want to pass; but if it be through a place which is closed for the security of the owner, the right of passage can be exercised only at convenient hours; for it would be unreasonable that a yard or house should be left open at all hours of the night.

ART. 778.—The right of opening lights or of view, granted indefinitely to him who is about building, gives him the privilege of opening all the windows which may be necessary to light or embellish his house and the buildings attached to it, to give to the windows the form and size he may think proper to adopt, because such is presumed to have been the intention of the parties.

But after the buildings are all finished, the possession and situation of the ground determine the extent of the servitude, and the owner can neither multiply nor enlarge his windows.

SECTION V.—*How Servitudes are extinguished.*

ART. 779.—Servitudes are extinguished :

1. By the destruction of the estate which owes the servitude, or of that to which the servitude is due, or by such a change taking place that the thing subject to the servitude cannot be used ;

2. By prescription resulting from non-usage of the servitude during the time required to produce its extinction ;

7 L. 52.

3. By confusion ;

4. By the abandonment of that part of the estate which owes the servitude ;

5. By the renunciation of the servitude on the part of him to whom it is due, or by the express or tacit remission of his right ;

6. By the expiration of the time for which the servitude was granted, or by the happening of the dissolving condition attached to the servitude ;

7. By the dissolution of the right of him who established the servitude.

ART. 780.—Servitudes are extinguished when the things are in such a situation that they can no longer be used, and when they remain perpetually in such a situation.

ART. 781.—If the things are re-established in such a manner that they may be used, the servitudes will only have been suspended, and they resume their effect, unless, from the time they ceased to be used, sufficient time has elapsed for prescription to operate against them.

ART. 782.—If a wall in common, or a house subject to a servitude, or to which a servitude is due, is rebuilt after having been destroyed, demolished or thrown down, all the servitudes, active and passive, which existed on this wall or house, continue to exist on the new wall or house, but they cannot be augmented ; provided always that they be rebuilt within such a time that prescription has not operated against them, as is mentioned in the following articles.

ART. 783.—If the house or edifice which has been destroyed, demolished or thrown down by any accident, belonged to the proprietor to whom the servitude is due, the servitude will be extinguished, if he does not rebuild the house or edifice within the time required for prescription, because it depended on him alone, by rebuilding his house, to revive the servitude it enjoyed.

ART. 784.—If, on the contrary, it is the house or edifice subject to the servitude, which has been destroyed, demolished or thrown down, the owner cannot, by rebuilding it after the time required for prescription, impair the servitude to which the house or edifice was previously subject, because he to whom the servitude was due had not the power to compel the other to rebuild the house or edifice thus destroyed.

ART. 785.—A right to servitude is extinguished by the non-usage of the same during ten years, if the parties be present, and twenty years, if absent.

1 R. 321.

ART. 786.—The time of prescription for non-usage begins, for interrupted servitudes, from the day they ceased to be used ; for continuous

servitudes, from the day any act contrary to the servitude has been committed.

1 R. 321.

ART. 787.—Acts contrary to the servitude are the destruction of works necessary for its exercise, as the stopping of spouts which carry off rain, or of windows or apertures which are necessary to the exercise of the right of view.

ART. 788.—If the owner of the estate to whom the servitude is due, is prevented from using it by any obstacle which he can neither prevent nor remove, the prescription of non-usage does not run against him as long as this obstacle remains.

ART. 789.—To preserve the right of servitude, and prevent prescription from running against it, it is not necessary that it should be exercised exclusively by the proprietor to whom it is due, or by those who use his rights, or who represent him directly, as the usufructuary, the lessee or tenant, the attorney in fact or agent. It suffices if the servitude has been exercised by workmen employed by the proprietor, his slaves, his friends, or those who come to see him.

ART. 790.—The servitude is preserved to the owner of the estate to which it is due, by the use which any one, even a stranger, makes of it, provided it be used as appertaining to the estate.

Thus the servitude is preserved to the owner by the use which a possessor in bad faith, who is in possession of the estate to whom it is due, makes of the servitude.

But if any one passes over the land of another, considering the way as public, or as belonging to another estate, the owner of the estate to whom the servitude is due, cannot avail himself of the use thus made of the servitude, to protect himself against the prescription which may have been acquired against himself.

ART. 791.—Prescription for non-usage does not take place against natural or necessary servitudes, which originate from the situation of places.

1 R. 321.

ART. 792.—The mode of servitude is subject to prescription as well as the servitude itself, and in the same manner.

By mode of servitude, in this case, is understood the manner of using the servitude, as is prescribed in the title.

ART. 793.—If he to whom a servitude is due, enjoys a right more extensive than that which is given him by the act establishing the servitude, he will be considered as having preserved his right of servitude; because the less is included in the greater.

But he cannot thus prescribe for the surplus, and can be compelled to confine himself to the exercise of the servitude granted by his title, unless it be a continuous or apparent servitude, which he has acquired by prescription.

ART. 794.—If, on the contrary, the owner has enjoyed a right less extensive than is given him by his title, the servitude, whatever be its nature, is reduced to that which is preserved by possession, during the time necessary to establish prescription.

ART. 795.—If the owner has merely enjoyed an accessory right, which was necessary to his right of servitude, he will not be considered as having used his right of servitude.

For example, he who has the right of drawing water from the well of his neighbor, has passed often through the land of the latter, and gone to the well without drawing any water during the time required for prescription, he will have lost his right of drawing water, without acquiring that of passage, which was merely accessory to the right of drawing water.

ART. 796.—If the owner has used another servitude than that granted to him, without using the latter, he may lose this last for non-usage during the time required for prescription, without acquiring that which he has used, if it be an interrupted or non-apparent servitude.

ART. 797.—If the estate in whose favor the servitude is established, belongs to several, and has never been divided, the enjoyment of one bars prescription with respect to all.

ART. 798.—If among the co-proprietors there be one against whom prescription cannot run, as for instance a minor, he shall preserve the right of all the others.

ART. 799.—When the estate to which the servitude is due, ceases to be undivided, by means of a partition, each of those who were the co-proprietors, only preserves the servitude by the use he makes of it, and the others lose it by non-usage during the time required for prescription.

If a servitude be due to several persons, but on different days, as the right of drawing water, he who does not exercise his right, loses it, and the estate subject to the servitude becomes free from it, as respects him.

ART. 800.—When the prescription of non-usage is opposed to the owner of the estate to whom the servitude is due, it is incumbent on him to prove that he, or some person in his name, has made use of this servitude as appertaining to his estate, during the time necessary to prevent the establishment of the prescription.

1 R. 321.

ART. 801.—Every servitude is extinguished, when the estate to which it is due, and the estate owing it, are united in the same hands.

But it is necessary that the whole of the two estates should belong to the same proprietor; for if the owner of one estate only acquires the other in part or in common with another person, confusion does not take effect.

ART. 802.—If the union of the two estates be made only under a condition, or if it cease by legal eviction; if the title be thus destroyed either by the happening of the condition or by legal eviction, the servitudes revive which, in the mean time, will have been rather suspended than extinguished.

Thus the exercise of redemption, the happening of the condition on which the estate terminates, the eviction from a succession by a nearer heir, the abandonment or relinquishment of an estate on account of mortgages, will revive all the servitudes active and passive.

ART. 803.—Confusion takes place by the simple acceptance of an inheritance, if there be but one heir.

If the heir who has thus accepted an inheritance, disposes of any estate belonging to the succession which is subject to any servitude towards his estate, without any stipulation for the preservation of his right of servitude, the estate thus alienated, which owed the servitude, remains free from it, in consequence of the confusion which had taken effect while the estate remained in his hands.

ART. 804.—But if the heir, under a simple acceptance, sell to a person the whole of his rights in the succession he has received, the sale prevents the confusion, and the estate belonging to the succession will continue to have the rights of servitude previously due to it, or be charged with the servitudes imposed on it, in the same manner as if it had not passed through the hands of the heir; because, in this case, the purchaser is not presumed to have purchased more or less than all the ancestor possessed.

ART. 805.—Confusion does not take effect if the heir has only a temporary possession of the estate subject to the servitude, or enjoying it for the purpose of delivering it to another person to whom it has been bequeathed, or when his right in it terminates at a certain fixed time.

ART. 806.—If the heir has accepted the succession under benefit of inventory, the confusion does not take effect; and if the heir is obliged to abandon the succession at the instance of the creditors, the servitudes resume their former state.

ART. 807.—The acquets, which the husband and wife make during the marriage, do not become confused with the private property of each; and if these acquets are sold during the marriage, the servitudes, active and passive, which existed previous to their being acquired by the husband and wife, continue to exist, without any stipulation to that effect.

ART. 808.—Except in the cases herein mentioned, and similar cases, services extinguished by confusion do not revive, except by a new contract; with the exception of continuous and apparent servitudes, with respect to which the disposition made by the owner of both estates is equivalent to a title.

ART. 809.—The renunciation or abandonment of the land extinguishes the servitudes charged on it, of whatever nature they may be, because the owner of the estate to which the servitude is due, is bound to accept the abandonment, which produces in his hand a confusion which puts an end to the servitude.

ART. 810.—It is not necessary to produce a discharge of the servitude, that the proprietor of the estate which owes it, should abandon the whole estate; it suffices, if he abandon the part on which the servitude is exercised.

ART. 811.—If a proprietor is bound to support a building or beams of his neighbor on a part of his wall, he may discharge himself from this servitude by abandoning the owner of the estate, to whom the servitude is due, that part of his wall upon which this servitude is exercised.

ART. 812.—Servitudes are also extinguished by the renunciation or voluntary release of them by the owner of the estate to which they are due.

This renunciation or release may be express or tacit.

ART. 813.—The express release must be made in writing, and is con-

fined to what is clearly expressed in the act containing it, because one is not easily presumed to have renounced his right.

Besides, the owner who makes the release, must be capable of disposing of immovables ; this release of a servitude being a real alienation.

ART. 814.—When the estate to which the servitude is due belongs to several owners, one of them cannot make a release of the servitude so as to discharge the estate owing the servitude, without the consent of his co-proprietors.

But the release which he makes will deprive him of the right of personally using the servitude.

ART. 815.—The release of the servitude is tacit, when the owner of the estate to which it is due permits the owner of the estate to which it is due permits the owner of the estate charged with the servitude, to build on it such works as presuppose the annihilation of the right ; because they prevent the exercise of it, for example, if he should permit the field, through which he has a right to pass, to be closed by a wall.

ART. 816.—In order that the tacit release of the servitude be inferred from the permission which the owner of the estate to which it is due has given for the erection of works which prevent the exercise of it, it is necessary :

1. That the permission or consent for the erection of these works should be given expressly, verbally, or in writing. From the mere sufferance of works contrary to the servitude, the release cannot be presumed, unless it has continued for a time necessary to establish prescription.

2. That the works thus constructed be of a permanent and solid kind, such as an edifice or walls, and that they present an absolute obstacle to every kind of exercise of the servitude.

ART. 817.—Servitudes are also extinguished when they have been established for a certain time only, or under a condition that in a certain event they shall cease ; for when the time expires, or the event takes place, the servitude becomes extinguished of right.

ART. 818.—Servitudes are in fine extinguished by the destruction of the right of him who established them ; for no one can transmit to another more right than he has himself ; from thence it follows, that if any one establish a servitude on an estate in which he has only a right suspended by a condition, or defeasible at a certain time or in certain cases, or subject to rescission, the servitude becomes extinguished with his right.

It is the same, if his title to the estate, charged with the servitude, is annulled by reason of some defect inherent to the act.

TITLE V.

OF FIXING THE LIMITS, AND SURVEYING OF LANDS.

ART. 819.—When two estates or lands contiguous, in cities or in the country, have never been separated, or have never had their boundaries determined, or if the bounds, which have been formerly fixed, are no longer to be seen, each of the proprietors of the contiguous estates has a right to compel the other to fix the limits of their respective properties.

17 L. 349.

ART. 820.—The action of boundary is derived from the same source as the action of partition. No one being bound to hold an estate in common, no one is bound to leave undecided the boundary lines, which separate his estate from that of his neighbor.

ART. 821.—The action of boundary, like that of partition, cannot be prescribed against; as every one is at liberty, at all times, to separate his part from an estate in common, so it is permitted to each proprietor to have ascertained the limits of contiguous estates, to have them fixed, as each has enjoyed his estate separately without having acquired any part of his neighbor's estate by prescription.

ART. 822.—By boundary is understood, in general, every separation, natural, or artificial, which marks the confines or line of division of two contiguous estates. Trees or hedges may be planted, ditches may be dug, walls or inclosures may be erected, to serve as boundaries.

But we most usually understand by boundaries, stones or pieces of wood inserted in the earth on the confines of two estates.

See 3 L. 90; 4 L. 534; 6 L. 543.

ART. 823.—The fixing the boundaries takes place not only between two neighboring proprietors, but between a proprietor and several others, when they have contiguous estates, or between several co-proprietors, when a partition of the property in common takes place.

ART. 824.—When two estates are separated by a public road or by a watercourse, which serves as a common limit, the action of boundary cannot be sustained in relation to them, unless the road or watercourse has experienced some change in its situation.

ART. 825.—The action of boundary may be instituted, not only by the owner, but by any person who possesses as owner, and his neighbor cannot require proof of his right of property.

ART. 826.—It may be instituted by the usufructuary, but the determination of the limits will be only provisional, unless the owner has been made a party to the suit; and in this case the owner may require the limits to be fixed anew at the termination of the usufruct.

ART. 827.—The lessee has no right to institute the action of boundary, but he may resort to his lessor, and oblige the latter to have the limits of the leased estate ascertained and fixed.

4 A. 33.

ART. 828.—The fixing new boundaries, or the investigation of old ones, may be made extra-judicially and by mutual consent, if the parties are of full age.

But if one of the parties be a minor, or interdicted, it must be done judicially.

4 R. 360.

ART. 829.—Whether the limits be fixed judicially or extra-judicially, it must be done by a sworn surveyor of this State, who shall be bound to make a *procès-verbal* of his work in the presence of two witnesses, called for the purpose, who shall sign the *procès-verbal* with him, or mention shall be made therein of the causes which prevented them from signing.

4 R. 360; 4 A. 33; See 3 R. 171.

ART. 830.—Whenever any surveyor is called on to fix the limits between adjacent estates, it is his duty to notify in writing the proprietors interested therein to be present at the work, if they think proper, and to inform them of the day and hour when he will proceed to fix the limits; and he is bound to make mention in his *procès-verbal* of the notice he may thus have given, of the names of the parties thus notified, and of the date of the notice; and the surveyor shall make a record of his proceeding, and of the plans drawn by him, in order that copies may be delivered to the parties who may require them.

See 3 R. 171.

ART. 831.—If the parties thus notified, their representatives or attorneys in fact, appear at the fixing of the limits, the surveyor appointed for the purpose is bound to demand of them their respective title papers, which they are bound to deliver to him, in good faith, if they have them in their possession, in order that the surveyor may determine, by examining them, in what place to fix the boundaries.

If the parties thus notified, or their representatives or attorneys in fact, refuse to deliver their titles, the surveyor shall make mention of their refusal in his *procès-verbal*, and of the causes they have alleged, if they have assigned any, for their refusal.

See 3 R. 171.

ART. 832.—The surveyor shall not set up his boundaries, until he shall have finished the whole work, and until then he must mark his lines of separations by pickets stuck in the ground for that purpose.

ART. 833.—If before the surveyor has finished the work, or set up the boundaries, the parties interested, or any of them, shall make opposition thereto, the surveyor must desist, and refer the parties to the court, to have a decision on their respective rights, after having made mention of the opposition in his *procès-verbal*, and the reason for the same, if any be alleged.

ART. 834.—It is forbidden to every proprietor of lands to fix the limits between him and his adjoining neighbors, without giving them notice to be present; and without this formality, every such proceeding is null, and will produce no effect against his neighbors, who, besides, have their action for damages against him, if they have suffered any injury thereby.

ART. 835.—When the limits have been fixed after due notice to the parties, and no opposition being made, the parties do not thereby lose

their right of resorting to a court of justice to rectify the operation if they think it for their interest; but the limits will remain provisionally as fixed, until otherwise determined.

ART. 836.—The action of boundaries must be brought before the court, within the jurisdiction of which the land is situated, without regard to the domicile of the parties.

ART. 837.—It is the duty of the judge who has cognizance of suits on the subject of limits, to appoint surveyors to inspect the premises in question; the court, on their report, ought to decide according to the titles of the parties, and the plans which shall be presented to the court.

4 A. 33, 382; 5 A. 122; See 17 L. 349.

ART. 838.—The action of boundary, instituted against several co-proprietors of land in common, continues, notwithstanding they have divided it among themselves, or alienated it, if the partition or alienation is made after the institution of the suit.

ART. 839.—In matters of limits, reference must be had to ancient titles, unless it be proved that the bounds have been since changed, or that the land has been increased or diminished by changes caused by successions, by the will of the owner, or by other events.

2 A. 626; See 6 L. 543.

ART. 840.—When an owner has alienated one of two estates, which belonged to him, and the property of any part of it is contested, the limits assigned to it by the vendor at the time of the sale must be consulted. The limits anciently subsisting between the two estates, must not be regarded, because the designation, which the vendor makes of the metes and bounds, forms new limits between the two estates, or between the parts of them which he has sold.

See 6 L. 543.

ART. 841.—The limits must be fixed according to the respective titles of the parties; in absence of title, on both sides, possession governs.

2 A. 626; See 6 L. 543.

ART. 842.—When the parties claim under primitive concessions of their lands, or prove their dates and contents, in case their concessions should be lost, if there be less land than is called for in the different titles, he who has the oldest concession, takes the quantity of land therein mentioned, the other parties having a right only to the rest.

But this article must be understood to except the case in which the person having a title of later date, may have acquired by prescription the quantity of land mentioned in his concession.

ART. 843.—If the parties claim under simple acts of sale, or other acts which can transfer property, without being supported by any anterior concessions, and if they, or the person from whom they acquired their estates, have acquired them from one common proprietor, the preference shall be given to him whose title is of the most ancient date,

unless an adverse possession, for a time sufficient to establish prescription, has produced a difference in the situation of the parties.

6 N. S. 700; 11 L. 182; 13 L. 334; 17 L. 349; See 2 R. 72; 3 R. 171.

ART. 844.—If, on the contrary, the parties, or those from whom they have acquired, hold titles from different proprietors, the priority of date of one title to another, unless it be accompanied by prescription, gives no right of preference to the person holding it, and the case must be determined according to the rules prescribed in the following articles.

ART. 845.—If the titles, exhibited by one of the parties, fix the extent of land which he ought to have, and those exhibited by the other make no mention of the extent, the first takes the quantity of land mentioned in his title, and the second only takes the excess; unless the latter establish, by legal proof, or by the possession he has had, the quantity of land to which he is entitled.

12 L. 539; 17 L. 349.

ART. 846.—If the titles exhibited do not mention the quantity of land which each person ought to have, or unless it can be established in a legal manner, the limits must be so fixed as to divide the land equally between them.

13 L. 324.

ART. 847.—If the titles exhibited call for a greater or less extent of land than the land, which is to be bounded, contains, the limits must be so fixed as to divide proportionally among the parties interested the profit or loss resulting from this state of things.

It is understood that the rules prescribed in this and the preceding articles, only take effect in the absence of possession by one or more of the parties, sufficient to establish prescription.

17 L. 349; See 7 L. 106.

ART. 848.—Whether the titles, exhibited by the parties, whose lands are to be limited, consist of primitive concessions or other acts by which property may be transferred, if it be proved that the person, whose title is of the latest date, or those under whom he holds, have enjoyed in good and bad faith, uninterrupted possession, during thirty years, of any quantity of land beyond that mentioned in his title, he will be permitted to retain it, and his neighbor, though he have a more ancient title, will only have a right to the excess; for if one cannot prescribe against his own title, he can prescribe beyond his title or for more than it calls for, provided it be by thirty years' possession.

17 L. 349; 6 A. 382; See 7 L. 106; 12 L. 539.

ART. 849.—If the boundaries have been fixed according to a common title, or according to different titles, and the surveyor had committed an error in his measure, it can always be rectified, unless the part of the land, on which the error was committed, be acquired by an adverse possession of ten years, if the parties are present, and twenty years, if absent.

17 L. 349; 2 R. 72.

ART. 850.—If any one sells or alienates a piece of land, from one fixed boundary to another fixed boundary, the purchaser takes all the land between such bounds, although it give him a greater quantity of land than is called for in his title, and though the surplus exceed the twentieth part of the quantity mentioned in his title.

13 L. 151; 2 R. 461; 12 M. 425; 8 N. S. 159; 2 L. 498; See 6 L. 543; 11 L. 182; 16 L. 185; Art. 2471 post.

ART. 851.—If any one removes or pulls up bounds, which have been fixed, either provisionally or definitively, without being authorized by a decree of the court, he is liable to an action of damages on the part of the owner whose bounds he has removed or torn up, and may be condemned to place them in the situation they were before.

TITLE VI.

OF NEW WORKS, THE ERECTION OF WHICH CAN BE STOPPED OR PREVENTED.

ART. 852.—By a new work is understood every sort of edifice or other work, which is newly commenced on any ground whatever.

When the ancient form of a work is changed, either by an addition being made to it, or by some part of the ancient work being taken away, it is styled also a new work.

ART. 853.—Opposition may be made to every species of new work, from which injury is apprehended, whether the work be in a city or in the country, in places built up or not built up, public or private, conformably to the rules hereinafter prescribed.

See 17 L. 389.

ART. 854.—Opposition cannot be made to all work indiscriminately, but only to those which come under the denomination of new works, such as the constructing of new buildings, or the demolition or destruction of old works.

See 17 L. 389.

ART. 855.—Opposition cannot be made to those works, which any one makes for the repairs and support of an old building, if its ancient form be not changed thereby, because, unless this be done, it is not properly a new work.

ART. 856.—Opposition cannot be made to the works, which any one makes for the repairs or cleaning of his canals, spouts, sewers or aqueducts, whatever inconvenience or detriment may result therefrom, because it is for the public interest or safety that these things should be repaired and kept clean.

ART. 857.—Works which have been formerly built on public places, or in the beds of rivers or navigable streams, or on their banks, and which obstruct and embarrass the use of these places, rivers, streams, or their banks, may be destroyed at the expense of those who claim them,

at the instance of the corporation of the place, or of any individual of full age residing in the place where they are situated.

And the owner of these works cannot prevent their being destroyed under pretext of any prescription or possession, even immemorial, which he may have had of it, if it be proved that at the time these works were constructed, the soil, on which they are built, was public, and has not ceased to be so since.

9 R. 367.

ART. 858.—If the works, formerly constructed on the public soil, consist of houses or other buildings, which cannot be destroyed, without causing signal damage to the owner of them, and if these houses or other buildings merely encroach upon the public way, without preventing its use, they shall be permitted to remain; but the owner shall be bound, when he rebuilds them, to relinquish that part of the soil or of the public way, upon which they formerly stood.

4 A. 73.

ART. 859.—The corporations of cities, towns and other places, may construct on the public places, in the beds of rivers and on their banks, all buildings and other works which may be necessary for public utility, for the mooring of vessels and the discharge of their cargoes, within the extent of the respective limits.

2 A. 770; 4 A. 73; See 1S L. 273.

ART. 860.—If any one commence on his own land a building or other new work, which may be of detriment to his neighbor or any other individual, the latter may, in the presence of witnesses, forbid him to continue the work.

ART. 861.—If the person, thus forbidden to continue his works, will not suspend them, the person making the opposition, may apply to the judge in order to have them destroyed at the expense of the person making them, on alleging the injury and detriment the works may cause to him.

ART. 862.—The plaintiff, who sues in opposition, may obtain from the judge a mandate commanding the defendant to suspend his works until further order, if he affirm under oath, at the foot of his petition, that he has forbidden the defendant to continue his works, and that the construction may cause him injury or damage, and if he give good and sufficient security to the defendant, in such sum as shall be fixed by the judge, to answer for the damage caused to the defendant, in case the opposition should not be well founded.

ART. 863.—Though the judge may have commanded the defendant to suspend his works, he may, in the course of the suit, authorize him to continue them, if he think their continuance will not cause an irreparable injury to the plaintiff, but the defendant will be bound to give good and sufficient security, in such sum as shall be fixed by the judge, to pay any damages, which may be caused to the plaintiff by their being continued, and that he will place every thing in its former situation, if he should be finally condemned to destroy his works.

ART. 864.—If, on the trial of the case, it be determined that the new works can cause injury or detriment to the person who complains of them, and who has made opposition to their erection, the judge shall

order them to be destroyed at the expense of him who has caused them to be constructed, how far soever they may be advanced, even if they should be finished, under the authority given and the security furnished according to the terms of the preceding article, unless the works can be so changed as to cause no detriment to the complainant.

ART. 865.—If, after the commencement of a suit for the destruction of new works, the defendant shall sell the land upon which these works stand, the judgment which orders the destruction of them, shall be executed against the purchaser, though he may have been ignorant of the prohibition made to his vendor to discontinue them, saving always his recourse for indemnity against his vendor.

BOOK III.

OF THE DIFFERENT MODES OF ACQUIRING THE PROPERTY OF THINGS.

PRELIMINARY TITLE.

GENERAL DISPOSITIONS.

ART. 866.—The property of things or goods is acquired by inheritance either legal or testamentary, by the effect of obligations, and by the operation of law.

See 6 L. 231.

TITLE I.

OF SUCCESSIONS.

CHAPTER I.

OF THE DIFFERENT SORTS OF SUCCESSIONS AND HEIRS.

ART. 867.—Succession is the transmission of the rights and obligations of the deceased to the heirs.

12 R. 105; 2 A. 405.

ART. 868.—Succession signifies also the estate, rights and charges which a person leaves after his death, whether the property exceeds the charges, or the charges exceed the property, or whether he has only left charges without any property.

12 R. 105; 1 A. 35.

ART. 869.—The succession not only includes the rights and obligations of the deceased, as they exist at the time of his death, but all that has accrued thereto since the opening of the succession, as also the new charges to which it becomes subject.

12 R. 105; See 11 L. 1; 13 Peters, 409.

ART. 870.—Finally, succession signifies also that right by which

the heir can take possession of the estate of the deceased, such as it may be.

12 R. 105

ART. 871.—There are three sorts of successions, to wit:

Testamentary successions;

Legal successions;

And, irregular successions.

2 A. 98.

ART. 872.—Testamentary succession is that which results from the institution of heir, contained in a testament executed in the form prescribed by law. This sort of succession is treated of under the title of *donations inter vivos and mortis causa*.

ART. 873.—Legal succession is that which the law has established in favor of the nearest relation of the deceased.

ART. 874.—Irregular succession is that which is established by law in favor of certain persons, or of the State in default of heirs either legal or instituted by testament.

These two last sorts of successions are the objects of the present title.

ART. 875.—There are three kinds of heirs which correspond with the three species of successions described in the preceding articles, to wit:

Testamentary or instituted heirs;

Legal heirs, or heirs of the blood;

And, irregular heirs.

ART. 876.—He who is the nearest relation to the deceased, capable of inheriting, is presumed to be heir, and is called presumptive heir.

This quality is given to him before the decease of the person from whom he is to inherit, as well as after the opening of the succession, until he has accepted or renounced it.

ART. 877.—Heirs are divided into two classes, according to the manner in which they accept successions left to them, to wit: unconditional and beneficiary heirs.

ART. 878.—Unconditional heirs are those who inherit without any reservation, or without making an inventory, whether their acceptance be express or tacit.

ART. 879.—Beneficiary heirs are those who have accepted the succession under the benefit of an inventory regularly made.

ART. 880.—The person who has become the universal successor of the deceased, who is possessed of all his property and rights, and who is subject to the charges for which the estate is responsible, is called the heir, no matter whether he be such by law, by the institution of a testament, or otherwise.

ART. 881.—The law does not take into consideration the origin nor the nature of the property in order to regulate the succession.

1 N. S. 665; 17 L. 312.

CHAPTER II.

OF LEGAL SUCCESSIONS.

SECTION I.—*General Rules.*

ART. 882.—If there is no testament or institution of heir, or if the institution is null or without effect, the succession is then open in favor of the legitimate heirs, by the mere operation of the law.

12 R. 584.

ART. 883.—There are three classes of legal heirs, to wit :

The children and other lawful descendants ;

The fathers and mothers and other lawful ascendants ;

And the collateral kindred.

2 A. 98.

ART. 884.—The nearest relation in the descending, ascending or collateral line, conformable to the rules hereafter established, is called to the legal succession.

ART. 885.—The propinquity of consanguinity is established by the number of generations, and each generation is called a degree.

6 A. 232.

ART. 886.—The series of degrees forms the line ; the series of degrees between persons who descend from one another, is called direct or lineal consanguinity, and the series of degrees between persons who descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

The direct line is divided into a direct line descending and direct line ascending : The first is that which connects the ancestor with those who descend from him ; the second is that which connects a person with those from whom he descends.

See 6 L. 231.

ART. 887.—In the direct line there are as many degrees as there are generations. Thus the son is with regard to the father, in the first degree, the grandson in the second, and *vice versa* with regard to the father and grandfather towards the sons and grandsons.

See 2 A. 405.

ART. 888.—In the collateral line the degrees are counted by the generations from one of the relations up to the common ancestor exclusively, and from the common ancestor to the other relations.

Thus brothers are related in the second degree ; uncle and nephew, in the third degree ; cousins german in the fourth, and so on.

ART. 889.—In matter of legal successions, no difference of sex, and no right of primogeniture are known ; but they are regulated by the most perfect equality.

SECTION II.—*Of Representation.*

ART. 890.—Representation is a fiction of the law, the effect of which is to put the representative in the place, degree, and rights of the person represented.

3 A. 186.

ART. 891.—Representation takes place *ad infinitum* in the direct descending line.

It is admitted in all cases, whether the children of the deceased concur with the descendants of a predeceased child, or whether, all the children having died before him, the descendants of the children be between them in equal or unequal degrees.

ART. 892.—Representation does not take place in favor of the ascendants, the nearest relation in degree always excluding those of a degree superior or more remote.

ART. 893.—In the collateral line, representation is admitted in favor of the children and descendants of the brothers and sisters of the deceased, whether they come to the succession in concurrence with the uncles and aunts, or whether, the brothers and sisters of the deceased having died, the succession devolves on their descendants in equal or unequal degrees.

See 7 N. S. 335.

ART. 894.—In all cases in which representation is admitted, the partition is made by roots; if one root has produced several branches, the sub-division is also made by roots in each branch, and the members of the branch take between them by heads.

ART. 895.—Persons deceased only can be represented; persons alive cannot.

ART. 896.—One who has renounced the succession of another, may still enjoy the right of representation with respect to that other.

Thus it is necessary that the children who succeed by representation, should have been heirs of their father or mother. Although they should have renounced their succession, they are nevertheless competent to represent them in the succession of their grandfather or other ascendants.

The word "*not*" should be inserted between the words "*is*" and "*necessary*," in the second paragraph of this article. See French text.

ART. 897.—When a person has been disinherited by his father or mother, or excluded from his succession for unworthiness, his children cannot represent him in the succession of their grandfather or other ascendants, if he is alive at the time of the opening of the succession, but they can represent him if he died before.

SECTION III.—Of Successions falling to Descendants.

ART. 898.—Legitimate children or their descendants inherit from their father and mother, grandfathers or other ascendants, without distinction of sex or primogeniture, and though they may be born from different marriages.

They inherit in equal portions and by heads, when they are in the same degree, and inherit by their own right; they inherit by roots, when all or part of them inherit by representation.

Stat. 25th March, 1844, p. 99.—§ 1. In all cases hereafter, when either husband or wife shall die, leaving no ascendants or descendants, and without having disposed by last will and testament, of his or her share in the community property, such share shall be held by the survivor in *usufruct* during his or her natural life.

§ 2. In all cases when the predeceased husband or wife shall have left issue of the marriage with the survivor, and shall not have disposed by last will and testament, of his or her share in the community property, the survivor shall hold in *usufruct*, during his or her natural life, so much of the share of the deceased in said community property as may be inherited by such issue: *Provided*, however, that such *usufruct* shall cease whenever the survivor shall enter into a second marriage.

3 A. 459; 4 A. 389.

SECTION IV.—*Of Successions falling to Ascendants.*

ART. 899.—If any one dies leaving no descendants, but a father and mother, and brothers and sisters, or descendants of these last, the succession is divided into two equal portions, one of which goes to the father and mother, who divide it equally between them, the other to the brothers and sisters of the deceased, or their descendants, as is prescribed in the following section:

7 N. S. 414; See 7 N. S. 665.

ART. 900.—If the father or mother of the person who has died without issue, has died before him, the portion which would have been inherited by such deceased parent, according to the terms of the preceding article, will go to the brothers and sisters of the deceased, or to their descendants, in the manner directed by the following section.

7 N. S. 414.

ART. 901.—If the deceased has left neither descendants nor brother nor sister, nor descendants from them, nor father nor mother, but only other ascendants, these ascendants inherit the succession to the exclusion of all the collaterals, in conformity with the dispositions of the articles which follow.

ART. 902.—If there are ascendants in the paternal and maternal lines in the same degree, the estate is divided into two equal shares, one of which goes to the ascendants on the paternal, and the other to the ascendants on the maternal side, whether the number of ascendants, on each side, be equal or not. In this case, the ascendants, in each line, inherit by heads.

ART. 903.—But if there is in the nearest degree but one ascendant in the two lines, such ascendant excludes all other ascendants of a more remote degree, and alone takes the succession.

ART. 904.—Ascendants to the exclusion of all others, inherit the real estate and slaves given by them to their children or their descendants of a more remote degree, when these objects are found in the succession.

If these objects have been alienated, and the price is yet due in whole or in part, the ascendants have the right to receive the price. They also succeed to the right of reversion on the happening of any event which the child or descendants may have inserted, as a condition in their favor, for disposing of those objects.

17 L. 407; 19 L. 265; 3 L. 19.

The words "*who die without posterity*" should be inserted after the word "*descendants*," in the 1st paragraph of this Article. They are to be found in the original in the office of the Secretary of State, and were omitted by mistake by the publisher of the Code.

ART. 905.—Ascendants have also the right to take from the succession of their child or descendant who die without issue, the dowry they may have settled in money upon him.

See 17 L. 407.

ART. 906.—Ascendants inheriting the things mentioned in the preceding articles, which they have given their children or descendants who die without issue, take them subject to all the mortgages which the donee may have imposed on them during his life.

Also ascendants exercising the right of reversion are bound to contribute to the payment of the debts of the succession, in proportion to the value of the objects given.

See 17 L. 407.

SECTION V.—*Of the Succession of Collaterals.*

ART. 907.—If a person dies, leaving no descendants, and his father and mother survive, his brothers and sisters, or their descendants, only inherit half of his succession.

If the father or the mother only survive, the brothers and sisters, or their descendants, inherit three-fourths of his succession.

ART. 908.—If a person dies, leaving no descendants nor father nor mother, his brothers and sisters, or their descendants, inherit the whole succession to the exclusion of the ascendants and other collaterals.

See amendment to Art. 898; 15 L. 527, 562.

ART. 909.—The partition of the half the three-fourths or the whole of a succession falling to brothers and sisters, as mentioned in the two preceding articles, is made in equal portions, if they are all of the same marriage: if they are of different marriages, the succession is equally divided between the paternal and maternal lines of the deceased; the german brothers and sisters take a part in the two lines, the paternal and maternal brothers and sisters, each in their respective lines only; if there are brothers and sisters on one side only, they inherit the whole succession to the exclusion of all other relations of the other line.

In all these cases, the brothers and sisters of the deceased, or their descendants, inherit in their own right or by representation, as is regulated in the section which treats of representation.

See 14 L. 22.

ART. 910.—When the deceased has died without descendants, leaving neither brothers nor sisters, nor descendants from them, nor father nor mother nor ascendants in paternal or maternal lines, his succession passes to his collateral relations.

Among the collateral relations, he who is the nearest in degree, excludes all the others, and if there are several in the same degree, they partake equally and by heads, according to their number.

6 A. 232.

CHAPTER III.

OF IRREGULAR SUCCESSIONS.

ART. 911.—When the deceased has left neither lawful descendants, nor lawful ascendants, nor collateral relations, the law calls to his inheritance either the surviving husband or wife, or his or her natural children, or the State in the manner and order hereafter directed.

12 R. 584; 2 A. 98, 268; See 5 R. 9.

ART. 912.—Natural children are called to the legal succession of their natural mother, when they have been duly acknowledged by her, if she has left no lawful children or descendants, to the exclusion of her father and mother and other ascendants, or collaterals of lawful kindred.

In case the natural mother has lawful children or descendants, the rights of the natural children are reduced to a moderate alimony, which is determined by the rules established in the title of *father and child*.

ART. 913.—Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of which shall be determined as is directed in the title of *father and child*.

3 R. 441; 2 A. 98; 6 A. 156, 160; See 6 L. 642.

ART. 914.—Bastard, adulterous or incestuous children shall not enjoy the right of inheriting the estates of their natural father or mother, in any of the cases above mentioned, the law allowing them nothing more than a mere alimony.

3 R. 441; 6 A. 160.

ART. 915.—The law does not grant any right of inheritance to natural children to the estate of the legitimate relations of their father or mother.

ART. 916.—The estate of a natural child deceased without posterity, belongs to the father or mother who has acknowledged him, or in equal portions to the father and mother, when he has been acknowledged by both of them.

6 L. 561; 6 A. 156; See 4 M. 265; 11 L. 128; ante, Art. 221.

ART. 917.—If the father and mother of the natural child died before him, the estate of such natural child shall pass to his natural brothers and sisters, or to their descendants.

6 L. 645, 561; 5 R. 9; 2 A. 98; See 12 R. 584.

ART. 918.—If a married man has left no lawful descendants nor ascendants, nor any collateral relations, but a surviving wife not separated from bed and board from him, the wife shall inherit from him to the exclusion of any natural child or children duly acknowledged.

If, on the contrary, it is the wife who died without leaving any lawful descendants, ascendants or collateral relations, her surviving husband not separated from bed and board from her, shall not inherit from her, except in case she should leave no natural child or children by her duly acknowledged.

6 L. 642; 1 A. 181; 2 A. 98, 268.

ART. 919.—Children called to the succession of their natural

father or mother, in the case mentioned in the preceding articles, are permitted to take possession of the succession, which has fallen to them, only by the order of the judge of the parish in which the succession is opened.

6 L. 560.

ART. 920.—If the succession be that of the natural mother deceased without legitimate children, the putting into possession of the natural children shall not be pronounced without calling the relations of the deceased, who would have inherited in the default of the natural children if they are present or represented in the State, or without appointing a person to defend them, if they are absent.

ART. 921.—If the succession be that of the natural father, the natural children by him acknowledged cannot be put into possession of the succession which they claim, until a faithful inventory has been made of the same by a notary appointed for that purpose by the judge, in the presence of a person appointed to defend the interest of the absent heirs of the deceased, and on giving good and sufficient security, as is prescribed in the following article.

See 14 L. 542.

ART. 922.—The security to be furnished by natural children put into possession of the effects of the succession of their father, shall be two-thirds of the amount of the inventory made thereof, and this security shall be given to insure the restitution of such portion of these effects, which they may be adjudged to restore, in case the legitimate heirs of the father should present themselves within three years from the putting into possession, after which time this security shall be discharged.

ART. 923.—In defect of lawful relations, or of a surviving husband or wife, or acknowledged natural children, the succession belongs to the State.

6 L. 645; 5 R. 9; 12 R. 584; 2 A. 98.

ART. 924.—The surviving husband or wife called to the succession of the other who is deceased, must cause the seals to be fixed on the effects thereof, and be authorized to take possession of the same by the judge of the place in which the succession is opened, after having caused a true and faithful inventory to be made by a notary duly authorized to that effect by the judge, in the presence of a person appointed to defend the interest of the absent heirs of the deceased, in case there are any, and after having given good and sufficient security, as prescribed in the following article.

1 A. 181.

ART. 925.—The security to be given by the surviving husband or wife who shall demand to be put into possession of the effects of the deceased husband or wife, is to be of the estimated value of these effects, to the end of securing the restitution of the estate, in case any heir should come forward within the space of three years, after his or her having been put in possession, which term being expired, the security shall remain discharged from his obligation.

ART. 926.—During the three years that the security furnished by the surviving husband or wife, or natural children put into possession of the succession of their father, continues, they cannot in any manner alienate the real estate by them thus possessed, nor sell the slaves, un-

less it be under the authority of the court, at public auction, and in cases which their alienation is deemed necessary.

ART. 927.—The surviving husband or wife and natural children, who shall fail to fulfil any of the formalities or obligation prescribed in the preceding articles, shall be liable to damages towards the heir, if any should be incurred.

CHAPTER IV.

IN WHAT MANNER SUCCESSIONS ARE OPENED.

ART. 928.—The succession, either testamentary or legal, or irregular, becomes open by death or by presumption of death caused by long absence, in the cases established by law.

6 N. S. 196.

ART. 929.—The place of the opening of successions is fixed as follows.

In the parish where the deceased resided, if he had a fixed domicile or residence in this State.

In the parish where the deceased owned real estate, if he had neither domicile nor residence in this State, or in the parish in which it appears by the inventory his principal effects are, if he have effects in different parishes.

In the parish in which the deceased has died, if he had no fixed residence, nor any immovable effects within this State, at the time of his death.

13 L. 375; 11 R. 67; 2 L. 270; See 16 L. 11; 7 N. S. 51.

ART. 930.—If several persons respectively entitled to inherit from one another, happen to perish in the same event, such as a wreck, a battle, or a conflagration, without any possibility of ascertaining who died first, the presumption of survivorship is determined by the circumstances of the fact.

ART. 931.—In defect of circumstances of the fact, the determination must be guided by the probabilities resulting from the strength, age, and difference of sex, according to the following rules.

ART. 932.—If those who have perished together were under the age of fifteen years, the eldest shall be presumed to have survived.

If both were above the age of sixty years, the youngest shall be presumed to have survived.

If some were under fifteen years, and some above sixty, the first shall be presumed to have survived.

ART. 933.—If those who have perished together, were above the age of fifteen years and under sixty, the male must be presumed to have survived, where there was an equality of age, or a difference of less than one year.

If they were of the same sex, the presumption of survivorship, by which the succession becomes open in the order of nature, must be admitted, thus the younger must be presumed to have survived the elder.

ART. 934.—A succession is acquired by the lawful heir, who is called

by law to the inheritance, immediately after the death of the deceased person to whom he succeeds.

This rule refers as well to testamentary heirs as to instituted heirs and universal legatees, but not to particular legatees.

9 L. 146; 15 L. 527; 7 R. 183; 2 A. 339; See 12 R. 258; 4 A. 571; 5 A. 113; 15 L. 562.

ART. 935.—The right mentioned in the preceding article, is acquired by the heir by the operation of the law alone, before he has taken any step to put himself in possession, or has expressed any will to accept it.

Thus children, idiots, those who are ignorant of the death of the deceased, are not the less considered as being seized of the succession, though they be merely seized of right and not in fact.

9 L. 146; 15 L. 527; 7 R. 183; 2 A. 339; See 15 L. 562.

ART. 936.—The heir being considered seized of the succession from the moment of its being opened, the right of possession, which the deceased had, continues in the person of the heir, as if there had been no interruption, and independent of the fact of possession.

5 A. 113; 2 A. 339; 9 L. 146; 15 L. 527; 7 R. 173; 4 A. 571.

ART. 937.—The right of possession, which the deceased had, being continued in the person of his heir, it results that this possession is transmitted to the heir with all its defects, as well as all its advantages, the change in the proprietor producing no alteration in the nature of the possession.

Thus the extent of the rights of the deceased regulate those of the heir, who succeeds to all his rights which can be transmitted, that is, to all those which are not, like usufruct, attached to the person of the deceased.

ART. 938.—The heir being considered as having succeeded to the deceased from the instant of his death, the first effect of this right is that the heir transmits the succession to his own heirs, with the right of accepting or renouncing, although he himself have not accepted it, and even in case he was ignorant that the succession was opened in his favor.

2 L. 299; See Art. 936 and references.

ART. 939.—The second effect of this right is to authorize the heir to institute all the actions, even possessory ones, which the deceased had a right to institute, and to prosecute those already commenced. For the heir, in every thing, represents the deceased, and is of full right in his place as well for his rights as his obligations.

See 2 A. 465; Art. 936.

ART. 940.—Though the succession be acquired by the heir from the moment of the death of the deceased, his right is in suspense, until he decide whether he accepts or rejects it.

If the heir accept, he is considered as having succeeded to the deceased from the moment of his death; if he rejects it, he is considered as never having received it.

2 A. 466; 4 A. 571; 5 A. 113; 8 L. 321.

ART. 941.—The heir, who accepts, is considered as having succeeded to the deceased from the moment of his death. not only for the part of

the succession belonging to him in his own right, but for the parts accruing to him by the renunciation of his co-heirs in the succession of the deceased.

ART. 942.—When all the heirs in the nearest degree renounce the succession, which is accepted by those in the next degree, these last are considered as having succeeded directly and immediately to the rights and effects of the succession from the moment of the death of the deceased.

Therefore the heirs, thus succeeding by the renunciation of relations nearer in degree, transmit the succession to their own heirs, if they die before having accepted it, in the same manner as if they had succeeded in the first degree to the deceased.

ART. 943.—Natural children and the surviving husband or wife, before being put into possession of the estate left to them, are not considered as having succeeded to the deceased from the instant of his death; but they do not the less transmit their rights to their heirs, if they die before having made their demand to be put into possession. The reason is, that this sort of heirs having only a right of action to cause themselves to be put into possession of successions thus falling to them, this right and this action form a part of the succession, which they transmit to their heirs.

See 4 L. 267.

CHAPTER V.

OF THE INCAPACITY AND UNWORTHINESS OF HEIRS.

ART. 944.—The incapacity of heirs is the absence of those qualities required in order to inherit at the moment the succession is opened. He who wants these qualities at this time cannot be the heir.

It is at the moment of the opening of the succession that the capacity or incapacity of the heir, who presents himself to claim an intestate succession, is considered.

6 L. 560; 17 L. 46.

ART. 945.—All free persons, even minors, lunatics, persons of insane mind and the like, may transmit their estates *ab intestato* and inherit from others.

Slaves alone are incapable of either.

17 L. 812; 8 M. 161; See 12 R. 585.

ART. 946.—The incapacity of heirs is not presumed. He who alleges it must prove it.

17 L. 46; See 12 R. 585.

ART. 947.—In order to be able to inherit, the heir must exist at the moment the succession becomes open.

17 L. 46.

ART. 948.—The child in its mother's womb is considered as born for all purposes of its own interest; it takes all successions opened in its favor since its conception, provided it be capable of succeeding at the moment of its birth.

And the child legitimated by a marriage posterior to its conception,

only takes those successions which are opened since the marriage of the father and mother.

17 L. 46.

ART. 949.—Nevertheless, if the child conceived is reputed born, it is only in the hope of its birth; it is necessary then that the child be born alive, for it cannot be said those who are born dead have ever inherited.

17 L. 46.

ART. 950.—When the child is born alive, though it may have been extracted by force from its mother's womb, and may have lived but an instant, provided the fact of its living be ascertained, it inherits the successions opened in its favor since its conception, and transmits them accordingly.

See 5 M. 93.

ART. 951.—There are two things to be proved in order to vest the child with the right of inheriting; one, that the child be conceived at the opening of the succession; the other, that the child be born alive.

See 5 M. 93.

ART. 952.—In order to ascertain if the child has been conceived in marriage, and can inherit from the husband deceased, after its conception, reference must be had to the rules concerning the filiation of legitimate children established in the title of *father and child*.

ART. 953.—In all cases in which the husband cannot, by law, contest the legitimacy of the child, born before the hundred and eightieth day of marriage, he will have a right to the succession of this child, and to those successions which fall to the child, in the same manner as if the child had been regularly legitimated.

ART. 954.—If the mother marry again within two months after the death of her husband, and a child be born five months after the second marriage, if the child be born capable of living, it is considered the issue of the first marriage, and is admitted to the succession of the first husband.

ART. 955.—In the calculation of the number of months necessary for a child to be considered as born capable of living, thirty days are counted for each month, and the day begun is counted for a whole day, because it is for the interest of the child.

ART. 956.—Though in general it is incumbent on those who allege incapacity to inherit to prove it, nevertheless, those who claim rights under the child, on account of its having survived, are bound to prove that it was conceived at the time the succession was opened, and that it came into the world alive.

ART. 957.—With regard to the proofs necessary to establish the existence of the child at the moment of its birth, it must not be determined that it was born alive by the simple palpitation of its members, but by its respiration, or by other signs which demonstrate its existence.

ART. 958.—They are called unworthy in matters of succession, who, by the failure in some duty towards a person, have not deserved to inherit from him, and are in consequence deprived of his succession.

ART. 959.—There is this difference between being unworthy and incapable of inheriting, that he who is declared incapable of inheriting, has never been heir, whilst he who is declared unworthy, is not the less

heir on that account, if he has the other qualities required by law to inherit. Thus a person unworthy of inheriting remains seized of the succession, until he is deprived of it by a judgment, which declares him divested of it for cause of unworthiness.

ART. 960.—Persons unworthy of inheriting, and, as such, deprived of the successions to which they are called, are the following :

1. Those who are convicted of having killed, or attempted to kill the deceased; and in this respect they will not be the less unworthy though they may have been pardoned after their conviction;

2. Those who have brought against the deceased some accusation found calumnious, which tended to subject the deceased to an infamous or capital punishment;

3. Those who, being apprised of the murder of the deceased, have not taken measures to bring the murderer to justice.

ART. 961.—The unworthiness is never incurred by the act itself; it must be pronounced by the court in a suit instituted against the heir accused of unworthiness, after he has been duly cited.

ART. 962.—Not denouncing the murder of the deceased shall not be opposed as a cause of unworthiness in the heir, if such heir is the husband or wife of the murderer, or his relation in the ascending, descending, or collateral line, down to the third degree inclusively.

ART. 963.—If the heir be declared unworthy of inheriting by a definitive judgment, he shall be condemned to deliver to the relations succeeding on his default, or those who have succeeded jointly with him, not only the effects of the succession of which he has had the use since its opening, but all the fruits, revenues, and interest he has derived from such effects, since the opening of the succession.

ART. 964.—The heir being legally seized of the succession, until a definitive judgment be pronounced declaring that he is unworthy, and that he be divested of the succession, all sales which he may have made of the property of the succession are valid, provided they have been made without fraud on the part of the purchasers.

The sales are also valid, though they may have been made since the institution of the suit to determine the unworthiness of the heir, if the purchasers had not and could not have been informed of its being instituted.

But in all cases the heir, thus divested of the succession, shall be condemned to restore the price of these sales, with interest from the day of the demand, and the relations who succeed on his default, after his destitution is pronounced, shall alone have the right to exact and receive the sums remaining due on the price of these sales, from the purchasers.

See 6 M. 260; 6 N. S. 432; 1 L. 312; 2 L. 461.

ART. 965.—Mortgages stipulated without fraud by the heir who is afterwards divested for cause of unworthiness, also remain in force in favor of the parties with whom they have been contracted, reserving to the person succeeding to the inheritance, his recourse against the unworthy heir.

ART. 966.—The destitution pronounced against the heir, revives in his favor all the rights and actions which he had against the succession, and which had been for a time extinguished by confusion.

So, in case he had paid any creditors of the succession, he shall be reimbursed, and those who have not been paid, have no right of action against him; the rights and actions of the succession against the heir, who is divested for cause of unworthiness, are also revived.

ART. 967.—The children of the person declared unworthy to succeed, being admitted to the succession *ab intestato* in their own name and without the aid of the representation, are not excluded by the fault of their father, but the father cannot claim, in any case, upon the property of that succession, the usufruct which the law grants him in certain cases.

ART. 968.—The exclusion, either for cause of incapacity or unworthiness, shall not be sued for by others than the relations who are called to the succession in default of the unworthy heir, or in concurrence with him; and this kind of suit shall be determined in the same manner as other civil actions.

ART. 969.—Suits to establish the unworthiness of heirs cannot be sustained, if there has been a reconciliation or pardon on the part of him to whom the injury was done.

If therefore a father has full knowledge of an injury done to him by one of his children, and died without disinheriting him, though he has sufficient time to make his will since he has had this knowledge, he will be considered as having forgiven the injury, and the child cannot be deprived of the succession of his father on account of unworthiness.

CHAPTER VI.

IN WHAT MANNER SUCCESSIONS ARE ACCEPTED, AND HOW THEY ARE RENOUNCED.

SECTION I.—*Of the Acceptance of Successions.*

ART. 970.—No one can be compelled to accept a succession, in whatever manner it may have fallen to him, whether by testament or the operation of law. He may therefore accept or renounce it.

Stat. 16th March, 1848, p. 84.—Henceforth it shall not be necessary for minor heirs to make any formal acceptance of a succession that may fall to them, but that such acceptance shall be considered as made for them with benefit of inventory, by operation of law, and shall in all respects have the full force and effect of a formal acceptance.

See 9 L. 135.

ART. 971.—All the rules relating to the acceptance, renunciation or partition of successions, the collation of goods and payment of debts, contained in this title, are applicable to testamentary as well as to intestate successions

13 L. 394.

ART. 972.—To be able to accept a succession, it is necessary that the succession should be open by the death of the person who is to be succeeded.

If, therefore, on the false report of the death of a person, his relation, who is to inherit from him, assumes the quality of his heir, and is put into possession of his effects, these acts do not render his relation his heir, even after his death, unless, since his death, his relation has continued to act as his heir.

ART. 973.—A person cannot accept a succession before it has fallen to him.

Thus, a relation to the deceased in the second degree can neither accept nor renounce the succession, until he who is related in the first degree has expressed his intention on the subject.

And in testamentary successions, the heir *ab intestato* can neither accept nor renounce, until the instituted heir has decided to accept or renounce the succession.

ART. 974.—It is not sufficient that the succession be fallen, it is also necessary, for the validity of the acceptance, that the heir know in a certain manner that it is opened or fallen to him.

Thus he who is ignorant of the death of the deceased, though the succession be really opened, can neither accept nor renounce it.

ART. 975.—If the heir *ab intestato* accepts the succession, under the opinion that there is no will, his acceptance is null, if a will be discovered, of the existence of which he was ignorant.

ART. 976.—He who accepts ought to know under what title the succession is left to him, so that if the instituted heir accepts the succession as coming to him *ab intestato*, the act is null.

ART. 977.—It is sufficient to establish the validity of the acceptance, that the heir knows that the succession is opened, and that he is called to it. It is not necessary that he should know what portion of it is left to him.

It is of no moment, if he be mistaken as to the degree of relationship which he bears to the deceased, and which gives him the right to inherit from him; though it may affect the amount of the portion coming to him, his acceptance is not the less valid on that account since he is an heir.

ART. 978.—The acceptance or rejection made by the heir, before the succession is opened or left, is absolutely null and can produce no effect; but this does not prevent the heir who has thus accepted, from accepting or rejecting validly the succession when his right is complete.

ART. 979.—The heir who is instituted under a condition cannot accept nor renounce the succession, before the condition has happened, or while he remains in ignorance of the condition having happened.

It is the same, if he be ignorant of the institution which is made in his favor.

ART. 980.—He who has the power of accepting the entire succession, cannot divide and only accept a part.

ART. 981.—The effect of the acceptance goes back to the day of the opening of the succession.

12 R. 243; 5 A. 113.

ART. 982.—The simple acceptance may be either express or tacit.

It is express, when the heir assumes the quality of heir in an unequal-

ified manner, in some authentic or private instrument, or in some judicial proceeding.

It is tacit, when some act is done by the heir, which necessarily supposes his intention to accept, and which he would have no right to do but in his quality of heir.

1 A. 280; 5 A. 113; 6 A. 13; See 5 R. 473; 6 L. 17; 19 L. 499; 1 N. S. 202; 2 N. S. 422; 2 A. 405; Arts. 439, 1006.

ART. 983.—By the word *act*, used in the preceding article, is understood any writing made with the intention of obliging himself or contracting as heir, and not a simple letter or note, still less a verbal declaration, in which the person who is called to the succession may have styled himself the heir.

2 N. S. 556; 8 N. S. 556; 19 L. 499.

ART. 984.—It is necessary that the intention should be united to the fact, or rather manifested by the fact, in order that the acceptance be inferred.

See 6 L. 17; 19 L. 499.

ART. 985.—The person who is called to the succession, if he dispose of a thing which he does not know to belong to the succession, does not thereby do an act that will make him liable as heir, because such an act does not include the will to accept.

19 L. 462; See 19 L. 499.

ART. 986.—On the other hand, there are some acts which, though in reality they are foreign to the succession, nevertheless evidently manifest the will to accept; as, for example, if the person who is called to the succession possess himself or dispose of effects found in the succession, thinking that they belong to it, he does an act which makes him liable as heir, because his belief that the effects appertained to the succession is sufficient to establish his will to accept.

19 L. 462; 3 A. 36; See 2 R. 187.

ART. 987.—There are some facts which necessarily suppose the will of being heir, and others which may be differently interpreted, according to circumstances.

19 L. 462; 3 A. 36.

ART. 988.—All those acts of property which the person called to the succession can only do in quality of heir, suppose necessarily his acceptance, for to act as owner is to make himself heir.

There is an exception to this rule in those cases in which the acts of property are necessary for the preservation of the thing, as is hereafter explained.

19 L. 462, 499; 5 A. 113; See 3 L. 154; 2 R. 187.

ART. 989.—The person called to the succession does not commit an act of heir by disposing of property belonging to the succession by another title than that of heir; as if he should be testamentary executor and heir at the same time, provided that in disposing of the property he does not assume the quality of heir.

See 3 L. 154; 2 L. 371.

ART. 990.—With regard to these acts, which may be differently interpreted according to circumstances, it is necessary to distinguish acts of property from acts of administration or of preservation, or preparatory acts, which tend only to ascertain the value of the succession.

The time when these acts are done must also be taken into consideration.

See 19 L. 499.

ART. 991.—Thus acts which are merely conservatory, and the object of which is temporary, such as superintendence and administration, do not amount to an acceptance of the inheritance, unless the title and quality of heir should be therein assumed.

See 19 L. 499.

ART. 992.—The person called to the succession, who does certain acts either from necessity or for the benefit of the succession only, may show what was his real intent by reservations or protestations made before a notary, or inserted in his petition, if there be a judicial proceeding.

See 2 L. 299.

ART. 993.—Though it may be necessary to sell some of the effects of a succession to prevent loss or waste, the sale of the least article of property belonging to the succession will render the person called to the succession irrevocably the heir, unless he cause himself to be authorized by the judge to make this sale at public auction, on a petition in which he shall allege the necessity there is for making it, and shall protest that he does not mean by this act to do an act that would make him liable as heir.

See 19 L. 499; 2 R. 187.

ART. 994.—The person called to the succession does an act which makes him liable as heir, if, when cited before a court of justice as heir for a debt of the deceased, he suffers judgment to be given against him in that capacity, without claiming the benefit of the inventory, or renouncing the succession.

See 19 L. 499; 8 N. S. 232.

ART. 995.—An act of piety or humanity towards one's relations is not considered an acceptance; it is not therefore an acceptance to take care of the burial of the deceased, or to pay the funeral expenses, even without protestation.

ART. 996.—The donation, sale or assignment, which one of the co-heirs makes of his rights of inheritance, either to a stranger or to his co-heirs, is considered to be, on his part, an acceptance of the inheritance.

ART. 997.—The same may be said, 1st, of the renunciation, even if gratuitous, which is made by one of the heirs in favor of one or more of his co-heirs, and 2d, of the renunciation which he makes in favor of all his co-heirs indistinctly, when he receives the price of this renunciation.

ART. 998.—Those who are not capable of contracting obligations, such as minors or persons interdicted, cannot accept an inheritance; but the tutor can accept inheritances falling to the share of his pupil, and so can the curator with regard to those who are under his curatorship, with the formalities prescribed by law.

3 L. 242; See 3 R. 23.

ART. 999.—The acceptance of a succession by a married woman without the authorization of her husband or of the judge, is not valid.

ART. 1000.—If the wife should refuse to accept an inheritance, her

husband, who has an interest to have it accepted, in order to increase the revenues of which he has the enjoyment during the matrimony, may, at his risk, accept it on the refusal of his wife.

ART. 1001.—Not only the person who is entitled to an inheritance may accept it, but if he dies before having expressly or tacitly accepted or rejected it, his heirs shall have a right to accept it under him.

ART. 1002.—When several heirs in the same degree are called to a succession, some may accept unconditionally, others under the benefit of an inventory; for the unconditional heir does not exclude the heir under the benefit of inventory.

ART. 1003.—The heir who is of age cannot dispute the validity of his acceptance, whether it be express or tacit, unless such acceptance has been the consequence of fraud practised, or violence exercised against him; he never can urge such claim under pretext of lesion.

ART. 1004.—Nevertheless, if the heir who has expressly or tacitly accepted the succession, has not put himself into possession before he has caused a true and faithful inventory to be made, in conformity to that which is prescribed to the beneficiary heir, he can discharge himself from paying the debts of the succession out of his own property, by abandoning the effects of the succession to the creditors and legatees of the deceased, and rendering them a faithful account of the same, as well as of the fruits and revenues received by him.

But, in order to enjoy this advantage, the heir who has accepted, must not have disposed of any of the property movable or immovable of the succession, except in the forms prescribed in the case of the benefit of inventory.

He must not have been decreed by a definitive judgment to be the unconditional heir, nor have accepted at the suit of the creditors, instituted to oblige him to assume this quality.

ART. 1005.—The heir who has accepted the succession simply, may even be compelled to make an inventory of the succession, and to give security in the same manner as in the case of the benefit of an inventory, if a majority in amount of the creditors of the succession, either present or represented in the parish where the succession is opened, require it; in default of such security, there shall be appointed an administrator to administer the succession according to the provisions of the section relative to the benefit of inventory.

10 R. 396; 1 A. 181.

Stat. 25th March, 1828, p. 156.—§ 15. In obtaining possession of the effects of a succession, the heirs shall not be permitted, under any pretence whatsoever, to have an actual delivery of any property of such succession which may be in suit, or to receive the proceeds or any moneys of said succession when there shall be claims thereon pending in said courts, unless they previously give good and sufficient security, if the plaintiff or plaintiffs in such suits require it, and file their written obligation to that effect in the said court of probates, which security shall be of one-fourth over and above the amount of the claims for money thus pending, or of the appraised value of the property thus claimed,

which estimation shall be made by two appraisers appointed by the judge.

ART. 1006.—The effect of the simple acceptance of the inheritance, whether express or tacit, is such, that when made by an heir of age, it binds him to the payment of all the debts of the succession, not only out of the effects which have fallen to him from the succession, but even personally, and out of his own property, as if he had himself contracted the debts or as if he was the deceased himself; unless, before acting as heir, he make a true and faithful inventory of the effects of the succession, as here above established, or has taken the benefit treated of here after.

The engagement of the heir, who has accepted unconditionally, is somewhat different with respect to legacies, as shall be hereafter explained.

3 R. 29; 11 R. 396.

SECTION II.—*Of the Renunciation of Successions.*

ART. 1007.—He who is called to the succession, being seized thereof in right, is considered the heir as long as he does not manifest the will to divest himself of that right by renouncing the succession.

Stat. 29th March, 1826, p. 142.—§ 9. In all cases of cessions of property by insolvent debtors, and in all cases of renunciations of successions by the heirs, if there shall remain a surplus after payment of all the debts, the same shall be paid over to the ceding debtor or debtors, their heirs or assigns, or to the heirs who have made the renunciation, their heirs or assigns, as the case may be.

See 2 L. 371.

ART. 1008.—A succession may be renounced only under the same circumstances in which it can be legally accepted, according to the rules established in the preceding section.

ART. 1009.—A succession can neither be accepted nor rejected conditionally.

ART. 1010.—The renunciation of a succession is not presumed, it must be made expressly by public act before a notary, in presence of two witnesses.

2 L. 371; See 13 L. 58.

ART. 1011.—He to whose share an inheritance falls, may refuse it, provided he be capable of alienating; for the renunciation of an inheritance is, in all respects, assimilated to an alienation.

Thus, a minor cannot make a valid refusal of an inheritance, without the authorization of the judge, and of his tutor or curator.

The same rule applies to those who are interdicted.

3 L. 242.

ART. 1012.—A woman, under the power of her husband, cannot refuse the inheritance falling to her share, unless she is duly authorized to that effect by her husband, or, on the denial of her husband, by the judge.

ART. 1013.—He who is called to an inheritance may accept or renounce the succession by himself or by an attorney in fact, provided the attorney be specially appointed to that effect.

1 N. S. 638.

ART. 1014.—The creditors of the heir, who refuses to accept or who renounces an inheritance to the prejudice of their rights, can be authorized by the judge to accept it, in the name of their debtor and in his stead, according to the forms prescribed on this subject in the following section.

In case of this acceptance, if there be a renunciation on the part of the debtor, the renunciation is annulled only in favor of the creditors, for as much as their claims amount to, but it remains valid against the heir who has renounced.

If, therefore, after the payment of the creditors, any balance remain, it belongs to his co-heirs who may have accepted it, or if the heir who has renounced be the only one of his degree, it goes to the heirs who come after him.

If, on the contrary, the heir has only refused to accept and has not renounced, he can claim the surplus, on accepting the succession, provided his right of acceptance be not prescribed against.

ART. 1015.—The portion of the heir renouncing the succession, goes to his co-heirs of the same degree; if he has no co-heirs of the same degree, it goes to those in the next degree.

This right of accretion only takes place in lawful or *intestate* successions. In testamentary successions, it is only exercised in relation to legacies, and in certain cases.

12 L. 575.

ART. 1016.—The accretion operates of full right, independently of the will of the person for whose benefit it is, and whether he be ignorant or not of the renunciation which gave rise to it.

12 L. 575.

ART. 1017.—He in whose favor the right of accretion exists, cannot refuse the portion of the heir who has renounced, and keep that part which has fallen to him in his own right, because he is bound to accept or renounce for the whole.

ART. 1018.—The rule contained in the preceding article, admits of an exception, when the heir, who has already accepted, has caused his acceptance to be rescinded; for in this case his co-heirs may refuse the portion which he has thus abandoned, and release themselves from the debts with which it is incumbered, by abandoning this portion to the creditors.

ART. 1019.—The accretion is for the benefit of the heirs who have accepted, or who may accept; an heir, who has once renounced, has no claim to the portion of him who afterwards renounces.

ART. 1020.—The heirs, to whom the portion comes by the renunciation of their co-heirs, take it in the same proportion that they do the inheritance.

ART. 1021.—The partition of it is made among them, in their own rights or by representation, in the same manner as the succession is divided.

ART. 1022.—Heirs, who have embezzled or concealed effects belonging to the estate, lose the faculty of renouncing; and they shall remain unconditional heirs, notwithstanding their renunciation, and shall have no share in the property thus embezzled or concealed.

See 4 L. 485.

ART. 1023.—The faculty of accepting or renouncing an inheritance becomes barred by the lapse of time required for the longest prescription of the rights to real estates.

ART. 1024.—So long as the prescription of the right of accepting is not acquired against the heirs who have renounced, they have the faculty still to accept the inheritance, if it has not been accepted by other heirs, without prejudice, however, to rights which may have been acquired by third persons upon the property of the succession, either by prescription, or by lawful acts done with the administrator or curator of the vacant estate.

In like manner, so long as the prescription of renunciation is not determined, the heir may still renounce, provided he has made an act to make himself liable as heir.

9 L. 135; 2 A. 466; See Art. 847.

The words "*made an*" should be omitted in the second line of the last paragraph, and the words "*done no*" inserted. See French text. See original in the office of the Secretary of State.

SECTION III.—*Of the Benefit of Inventory and the Delays for Deliberating.*

ART. 1025.—The benefit of inventory is the privilege which the heir obtains of being liable for the charges and debts of the succession, only to the value of the effects of the succession, in causing an inventory of these effects to be made within the time and in the manner hereinafter prescribed.

ART. 1026.—By term for deliberating is understood the time given to the beneficiary heir, to examine if it be for his interest to accept or reject the succession which has fallen to him.

ART. 1027.—The heir, who wishes to enjoy the benefit of inventory and the term for deliberating, is bound, as soon as he knows of the death of the deceased to whose succession he is called, and before committing any act of heirship, to cause the seals to be affixed on the effects of the succession, by any judge or justice of the peace.

ART. 1028.—In ten days after this affixing of the seals, the heir is bound to present a petition to the judge of the place in which the succession is opened, praying for the removal of the seals, and that a true and faithful inventory of the effects of the succession be made, as is hereinafter prescribed.

ART. 1029.—In all cases, in which a succession is opened, and the presumptive heirs, who are present or represented, do not take the necessary measures to cause the seals to be affixed to, and an inventory made of the effects of the succession, any creditor of the deceased has the right, ten days after the opening of the succession, to cite the heirs before the judge of the place in which it is opened, in order to oblige them to declare whether they accept or renounce the succession.

2 L. 299.

ART. 1030.—If the heirs thus cited declare that they accept the succession, or if they are silent or make default, they shall be considered as having accepted the succession as unconditional heirs, and may be sued as such.

ART. 1031.—If, on the contrary, the heirs thus cited declare that they wish to take the benefit of inventory, and have the delay for delibe-

rating, the judge shall grant them the delay, and order all proceedings against them, personally or as heirs, to be suspended until the term has expired.

6 N. S. 293; 2 L. 299; 7 R. 24; 12 R. 41.

ART. 1032.—Whether the heir claims directly the term to deliberate, or whether it is claimed at the suit of the creditors of the succession, it shall be the duty of the judge to cause all the property belonging to the estate to be exhibited, and to make an inventory thereof, or to cause the same to be made by a notary duly authorized by him, which must be done without delay, and after calling the heir, and in his presence or that of his attorney, if either attend, and of two witnesses.

12 R. 41.

ART. 1033.—If there are, belonging to the succession, effects situated in different parishes, the judge of the place where the succession is opened, shall address commissions to the judges of these parishes, authorizing them to make the inventory of the property situated within their respective jurisdiction; these judges are bound to make the inventory as soon as possible, in the manner prescribed in the preceding article, and shall return, without delay, certified copies of the same to the judge issuing the commissions.

ART. 1034.—As soon as the inventory or inventories of the succession are finished, the judge of the place where the succession is opened, shall name an administrator to manage the property thereof, and oblige him to give good and sufficient security for the fidelity of his administration, unless the administrator prefer to furnish, in the stead of this security, a special mortgage on unincumbered property of a value sufficient to serve as a guaranty for his administration.

12 L. 129; 12 R. 41; 1 A. 181; 4 A. 558; 6 A. 64; See 17 L. 104; 1 R. 407; 7 R. 24; 9 R. 138; 11 R. 17.

ART. 1035.—In the choice of the administrator the preference shall be given to the beneficiary heir over every other person, if he be of age and present in the State.

4 L. 565; 6 L. 205; 18 L. 394; 1 R. 235; 1 A. 181; 2 A. 268; 4 A. 25; See 5 A. 692; C. P. 970, 6 L. 205.

ART. 1036.—If there be two or more beneficiary heirs of age and present in this State, the judge shall select one or two whom he shall consider the most solid, for the administration of the succession.

1 A. 181; 3 A. 565; 5 A. 692; 6 L. 215.

ART. 1037.—If all the beneficiary heirs be minors, their tutors or curators can claim the preference for the administration, and it shall be given them, under the charge of their being personally responsible for their acts of administration, and giving security, as before required, though these tutors or curators should be the father or mother of the minors.

2 L. 299; 6 L. 205, 493; 12 R. 41; 4 A. 558; 5 A. 27; See 17 L. 104; 1 R. 407; 7 R. 24; 9 R. 138; 11 R. 67.

ART. 1038.—If the beneficiary heirs are absent, but represented in the State, their attorneys in fact can claim, in the name of their constituents, the preference for the administration over every creditor of the succession, provided they have a special power to accept or reject this

succession, or a general power to accept or reject all successions which may fall to their principals.

5 N. S. 11; 7 L. 395

ART. 1039.—In case there be neither beneficiary heir, special attorney in fact, tutor nor curator of the heirs, who will or can accept the administration or give the necessary securities, it shall be given to one or two of the creditors, whom the judge shall choose from among those who have first claimed this charge.

18 L. 394.

ART. 1040.—If there be several heirs to a succession, some of which have accepted unconditionally, and others claim the benefit of the term for deliberating, the judge of the place, where the succession is opened, shall, notwithstanding, cause an inventory to be made of the effects of the succession, and shall appoint an administrator to manage them, until a partition of the same be made among the heirs.

12 R. 41; 1 A. 181; 2 A. 412; 3 A. 502; See 4 R. 412; 2 A. 462; 5 A. 196; C. P. 976; 6 L. 205, 493.

ART. 1041.—The security to be given by every administrator thus named, shall be one-fourth beyond the estimated value of the movables and immovables, and of the credits comprised in the inventory, exclusive of the bad debts. By bad debts are understood those which have been prescribed against, and those due by bankrupts who have surrendered no property to be divided among their creditors.

12 R. 155; 4 A. 558; 6 A. 64; See 17 L. 104; 1 R. 407; 7 R. 24; 9 R. 138; 12 R. 41.

ART. 1042.—The administrators thus chosen have the same powers and are subject to the same duties and responsibilities as the curators of vacant estates, under the modifications hereafter made.

7 N. S. 466; 8 N. S. 581; 8 L. 412; 13 L. 436; 12 L. 129; 14 L. 111; 17 L. 500; 7 R. 247; 10 R. 457; 11 R. 508; 2 A. 966; C. P. 992, 994.

ART. 1043.—The term given to the beneficiary heir to deliberate whether he will accept or reject the succession, shall be thirty days from the day on which the inventory is finished.

If there have been inventories made in different parishes, the term commences from the day the last of them is finished.

ART. 1044.—The administrator cannot sell the real estate or slaves of the succession committed to his charge, until the term for deliberating has expired, and as to movables, if there be any liable to be wasted or expensive to keep, he can sell them on the special authorization of the judge, at public auction, after advertisement during the time and in the manner prescribed by law.

Nevertheless, the judge can authorize the administrator to sell, in the same manner, movable effects which might be preserved, if it be necessary to dispose of the whole or part of them in order to pay debts, the payment of which is urgent.

10 L. 435; 17 L. 500.

ART. 1045.—During the term for deliberating, the beneficiary heir cannot be compelled to assume the quality of heir, nor can any judgment be rendered against him. If he renounces at the expiration of the term

or before, the costs by him lawfully incurred to obtain the benefit of inventory up to the renunciation, are at the expense of the succession.

ART. 1046.—Nevertheless, the creditors of the deceased may institute their suits against the administrator of the succession; but on the exception being made by the administrator that the beneficiary heir is within the time for deliberating, the proceedings shall be stayed until the expiration of the term, and until the heir has decided.

2 L. 299; 2 A. 575.

ART. 1047.—The effect of the benefit of inventory is that it gives the heir the advantage:

1. Of being discharged from the debts of the succession by abandoning all the effects of the succession to the creditors and legatees;

2. Of not confounding his own effects with those of the succession, and of preserving against it the right of claiming the debts due him from it.

See 4 L. 14.

ART. 1048.—At the expiration of the term for deliberating, the creditors and legatees of the succession can compel the heir to decide whether he accepts or rejects the succession, and they shall present a petition to this effect to the judge of the place where the succession is opened, who shall cause the beneficiary heir to be cited to answer thereto.

ART. 1049.—If, on this demand, the beneficiary heir declares that he accepts the succession simply, all the effects which compose it must immediately be delivered to him, but then he becomes responsible for the debts of the succession, not only to the amount of the effects thereof, but personally and out of his own property, and the creditors of the deceased can obtain judgment against him.

ART. 1050.—In case the heir makes default on this demand, he shall be considered as unconditional heir, and be bound as such.

ART. 1051.—But if the heir declares that he is not willing to accept the succession, otherwise than under the benefit of an inventory, the person appointed administrator of the estate, whether it was the heir himself or any other individual, shall proceed to the sale of the property of the succession and to the settlement of its affairs, as prescribed in the following articles; the beneficiary heir shall, at the time of such settlement, have a right to be paid, as any other creditor, all debts due him by the deceased, and shall moreover be entitled to the balance of the proceeds of the sale of the estate, if any such balance be left after payment of all the debts and charges of the succession.

4 L. 447; 7 R. 24; 10 R. 457; 11 R. 508; 12 R. 41, 243, 323.

ART. 1052.—If, on the contrary, the beneficiary heir renounces in due form, he preserves all the rights he has against the succession, if he is a creditor; and in case he has been originally appointed administrator of the succession he shall continue to manage it in this capacity, even if he is not a creditor of the deceased.

ART. 1053.—If on the renunciation of the beneficiary heir, the heirs, called to the succession on his default, accept the succession, they shall

be admitted thereto, and they shall have the right to enjoy that part of the term for deliberating, which has not expired, should the heir renounce before its expiration.

But if the term has expired, the heirs cannot obtain a prolongation of it, but must immediately decide whether they accept or reject the succession, as is provided for above.

2 A. 4.

ART. 1054.—If the heir secrete any thing belonging to the succession, or has knowingly, and in bad faith failed to include in the inventory any of the effects of the succession, he is deprived of the benefit of inventory.

4 L. 485.

ART. 1055.—As soon as the beneficiary heir has renounced in due form, if no heirs present themselves to accept the succession on his default, or if they themselves renounce, the administrator shall cause the immovables and other effects of the succession, remaining undisposed of, to be sold on the authorization of the judge, and after advertisement during the time and in the manner prescribed by law.

7 L. 812; 17 L. 500.

ART. 1056.—After the sale of the effects of the succession thus made, the administrator shall render his account to the judge who has appointed him, whose duty it is to examine and correct or approve of the same; but the administrator cannot pay the debts or legacies, even when there are sufficient funds, without being authorized by the judge to that effect.

If there be sufficient funds, the administrator shall present to the judge a statement of the payments to be made, in which he shall include the debts before any legacies; and if the funds in hands are not sufficient for the payment of the debts, he shall make a plan of the distribution to be made among the privileged and mortgage creditors, according to the order of the privileges and mortgages, and showing the dividend due to each.

2 A. 412, 459; See 11 L. 409; 12 R. 243; C. P. 1053 to 1055.

ART. 1057.—The judge, on the demand of the administrator, shall order that the creditors and legatees of the succession be notified to show cause, if any they have, within ten days, why they should not be paid conformably with the authorization solicited by the administrator, or according to the tableau of distribution by him presented.

2 A. 4.

ART. 1058.—If, in ten days after this notice, there is no opposition on the part of the creditors or legatees, the administrator shall proceed to the payment, in conformity with the authorization by him obtained, or the tableau of distribution which he has presented, and which the judge shall cause to be homologated.

ART. 1059.—If, on the contrary, there is any opposition to the payment or to the tableau of distribution, the judge shall decide thereon in a summary manner; but if his decision be appealed from, the administrator can make no payment, until final judgment be rendered thereon.

6 N. S. 350.

ART. 1060.—When, after payment has thus been made, new creditors present themselves, who have not made themselves known before, if there be not funds sufficient to pay them in the hands of the administrator, they can oblige the legatees, who have been paid, to return their legacies entirely, or a due proportion thereof, in order to satisfy their debts with interest and costs.

5 A. 38; See 10 L. 264.

ART. 1061.—But if the sums thus returned by the legatees are not sufficient to pay the creditors who have thus presented themselves, or if there are no legatees, these creditors have a direct action against the other creditors who have been paid, to oblige them to make up to the former a sum equal to that which the former would have received, had they presented themselves before; provided that the creditors, who have been paid in virtue of a privilege or mortgage, cannot be obliged to make this contribution, by new creditors who have neither privilege nor mortgage.

But this action of the creditors who have not been paid, against the creditors and legatees who have been paid, is barred by the lapse of three years from the date of the order or definitive judgment by virtue of which such payment has been made. In all these cases, these creditors have no right to sue the administrator, who has made the payment by order of the court, and according to the forms herein prescribed.

5 A. 33.

ART. 1062.—The administrator shall be allowed, on the settlement of his account, a commission of two and one-half per cent. on the amount of the inventory of the effects of the succession committed to his charge, deduction being made of the bad debts.

If there are two administrators, they divide this commission.

12 L. 608; 12 R. 155; 3 A. 624; See 5 N. S. 229; 3 L. 464; 1 R. 400; 4 A. 624; Arts. 1187, 1188, 1676.

ART. 1063.—The expenses of the seals, if they have been affixed, of the inventory and sale, and of the account rendered by the administrator, and other charges of the same kind, are at the cost of the succession.

1 R. 93.

ART. 1064.—When the creditors wish to be authorized to accept a succession, which their debtor refuses to accept, or which he has renounced to their prejudice, they must present a petition to the judge of the place where the succession is opened, to obtain the authorization necessary for that purpose, after the debtor or his representative has been duly cited, or a counsel appointed for him, if he is absent, by the judge.

See 2 L. 466.

ART. 1065.—If, on this demand, it is proved to the judge that the debtor refuses to accept the succession, or has renounced it to the prejudice of his creditors, he is bound to authorize the creditors to accept it in his stead; and it is the duty of the judge to cause immediately to be made an inventory of the effects of the succession, to appoint an administrator to manage them, sell them and pay the creditors, on his giving

good and sufficient security for the fidelity of his administration, as in the case of acceptance with the benefit of inventory.

12 L. 129.

ART. 1066.—After having paid the creditors, deducted his commission and other lawful expenses, if there remains a balance in the hands of the administrator, he shall pay it over to the presumptive heir, if the latter has not renounced the succession, or to the heirs who inherit on his default, if he has renounced it.

2 A. 412.

ART. 1067.—The creditors, who thus accept a succession in the name of their debtor, are considered as accepting it under benefit of inventory.

CHAPTER VII.

OF THE SEALS AND OF THE ADMINISTRATION OF VACANT ESTATES, AND ESTATES OF WHICH THE HEIRS ARE ABSENT AND NOT REPRESENTED.

SECTION I.—*Of the Seals, and of the Affixing and Taking off of the same.*

ART. 1068.—By seals, in matters of succession, is understood the placing of the judge's seal on the effects of a succession for the purpose of preserving them, and for the interest of third persons.

ART. 1069.—The seals must be placed on the bureaux, coffers, armoires and other things, which contain the effects and papers of the deceased, and on the doors of the apartments which contain these things, so that they cannot be opened without tearing off, breaking or altering the seals.

ART. 1070.—The seals, after the decease, must be affixed by a judge or justice of the peace within the limits of his jurisdiction, and may be affixed by him either as *ex officio*, or at the request of the parties.

ART. 1071.—The seals are affixed at the request of the parties, when a widow, a testamentary executor or any other person who pretends to have any interest in a succession or community of property, requires it.

ART. 1072.—The seals are affixed *ex officio*, when the presumptive heirs of the deceased do not all reside in the place where he died, or if any of them happen to be absent.

ART. 1073.—Whoever has knowledge of the death of a person, whose heirs are not all in the place, is bound to give immediate notice thereof to any judge or justice of the vicinage.

ART. 1074.—If a person dies in the house of any one who keeps boarders or gives lodging for money, and the latter neglects or delays to give notice of the decease, as is prescribed in the preceding article, he shall be responsible for all damages which may be caused to any one who may be affected by this negligence, besides the punishment which is or may be pronounced by the Penal Code in such case.

It is the same with a captain or master of a vessel or other craft,

who neglects to give notice, as before stated, of the death of a person deceased on board his vessel or craft.

ART. 1075.—It is the duty of every judge or justice of the peace, who knows of himself, or who shall receive information of the death of any one, all of whose heirs are not in the place, to go immediately to the house where the deceased resided, and to affix the seals in the presence of two witnesses of the neighborhood, who know to sign, if such can be found.

ART. 1076.—The judge or justice of the peace who affixes the seals, must not himself make, and must prohibit the persons present from making, any search or examination among the papers or effects of the deceased, even under the pretext of searching for a will.

ART. 1077.—The judge or justice of the peace who affixes the seals, ought to shut up in the apartments, the doors and windows of which he must seal, all the movables and effects which can be removed, and shall only leave out those for which the family of the deceased, if he has left any, had an absolute need for their use, of which he shall make a list at the end of his *procès-verbal* of the affixing of the seals.

ART. 1078.—*Procès-verbal* of the affixing of the seals must be reduced to writing in English or in French, on the spot where the seals are fixed, and without leaving it. The *procès-verbal* must contain the day of the month and year in which it is made, and be signed by the judge and the witnesses; if any of the latter do not know how to sign, mention of it must be made in the act.

ART. 1079.—The judge or justice of the peace who affixes the seals, shall appoint a guardian at the expense of the succession, to take care of the seals and of the effects of which an account is taken at the end of the *procès-verbal* of the affixing of the seals; the guardian must be a person domiciliated in the place where the inventory is taken.

The judge, when he retires, must take with him the keys of all the things and apartments upon which the seals have been affixed.

ART. 1080.—If it be a justice of the peace who has affixed the seals he must give immediate information of it to the judge of the place, and deliver to him the *procès-verbal* of the affixing of the seals, together with the keys of the things and apartments upon which he has affixed the seals.

ART. 1081.—If in the ten days which follow the affixing of the seals, an heir presents himself, who demands that the seals be raised, the judge shall order it to be done, if it is proved to him that all the heirs of the deceased are present or represented in the State.

1 L. 49.

ART. 1082.—If it be a testamentary executor who demands that the seals be raised, the judge ought not to grant his demand, until he is satisfied that the executor has caused himself to be recognized as such by the competent tribunal, and must oblige him to cause to be made an inventory of the effects on which the seals have been affixed, in the same manner as he is obliged to make the inventory of the other effects of the succession, according to the dispositions in this respect contained in the title which treats of *wills*.

1 L. 49.

ART. 1083.—If, at the expiration of the ten days, no one presents himself who has a right to demand the seals to be raised, or if those who do present themselves, do not comply with the conditions mentioned in the preceding articles, the judge of the place shall raise them, and make an inventory of the effects contained under them, and of the other effects of the succession within his jurisdiction, in the manner and form prescribed in the following section.

ART. 1084.—The raising of the seals is done by the judge of the place, or justice of the peace appointed by him to that effect, in the presence of two witnesses of the vicinage, in the same manner as for the affixing of the seals.

ART. 1085.—If the seals are found sound and entire, the judge or justice of the peace, after recognizing them, shall take them off, shall discharge the guardian, and deliver the effects to the heir or executor having a right to receive them as is before said.

ART. 1086.—If, on the contrary, the judge or justice of the peace finds that the seals have been broken maliciously or altered, he shall make mention of this circumstance in his *procès-verbal*, and of the declaration which the guardian may have made of his knowledge of the causes of the seals being altered or broken.

ART. 1087.—Whoever maliciously breaks or alters seals which have been affixed in the manner before described, on the effects of a succession, shall be liable for all damages which may be caused thereby, besides being exposed to the punishment prescribed by the penal laws

SECTION II.—Of the Administration of Vacant and Intestate Successions.

§ 1.—General Dispositions.

ART. 1088.—A succession is called vacant when no one claims it, or when all the heirs are unknown, or when all the known heirs to it have renounced it.

9 L. 135; 1 A. 181; See 11 L. 409; 12 R. 253.

ART. 1089.—A succession is called intestate when the deceased has left no will, or when his will has been revoked or annulled as irregular.

Therefore the heirs to whom a succession has fallen by the effects of law only, are called heirs *ab intestato*.

15 L. 527.

ART. 1090.—Vacant successions are managed by administrators appointed by courts, under the name of curators of vacant successions.

See 11 L. 409; 2 R. 443.

ART. 1091.—Intestate successions, the heirs of which or some of them are absent and not represented in the State excepting they are minors, are managed by administrators appointed by courts, under the name of *curators of absent heirs*.

11 L. 409; 15 L. 527.

ART. 1092.—But if the heirs, who are absent, are minors, the appointment of a curator, as prescribed in the preceding article, does not take place, and the succession is administered by the tutor or curator *ad bona* who must be appointed for the minor according to law, under the modifications established in the section of this title relating to the benefit of inventory.

3 L. 433; 7 L. 539; See 11 L. 409; 15 L. 527.

§ 2.—*Of the Inventory of Vacant and Intestate Successions subject to Administration.*

ART. 1093.—If, ten days after the opening of a succession, no one presents himself having the right to claim the possession of it, or if it be shown that all the heirs of the deceased, or a part of them, are absent from and not represented in the State, it is the duty of the judge of the place where the deceased has left property, after having raised the seals, if any have been affixed, to make an inventory of the effects of the deceased found within his jurisdiction, in presence of two witnesses and counsel appointed by him to represent the absent heirs.

ART. 1094.—If any of the heirs are present or represented in the State, or if the deceased had a community of goods or commercial partnership with any one, the judge who makes the inventory, is bound to notify these heirs or partners, or their attorneys in fact to attend, if they think proper, if they do not reside more than thirty miles from the place where the inventory is to be made.

ART. 1095.—If, by an express clause in the act of partnership which the deceased has entered into, it be stipulated that the partnership should continue, notwithstanding the death of one of the partners, between the surviving partner or partners and the heirs of the deceased, this agreement shall not prevent the judge from making an inventory of the partnership's effects; but he must leave them in the possession of the surviving partner or partners, without requiring from them any security for the administration.

See 1 L. 384.

ART. 1096.—Besides the formalities before described, the inventory of the effects of vacant successions, or those of which the heirs are absent and not represented, must be clothed with all the forms which are prescribed for public inventories.

ART. 1097.—Public inventories are those which are accompanied with the solemnities or formalities of the law, and which are made by a judge or by a notary duly appointed.

1 L. 49.

ART. 1098.—The public inventory ought to include :

1. An exact and particular description of all the effects movable and immovable of the succession, which are found in the place where the inventory is made, and the estimate which is made of each, by appraisers who must be appointed and sworn by the judge or notary who makes the inventory;

2. An exact and particular description of all the titles, books, credits and other important papers found in the succession, together with

the name, surname, and place of each debtor, if he be known, as well as the letter, number, and particualr mark under which each of these papers thus inventoried has been numbered and marked by the judge or notary ;

3. A description and enumeration of the different bundles, in which the other papers have been put up by the judge or notary, such as letters and others, following, as much as possible, the order of their dates, and mentioning the letter, number, or mark under which each of these bundles, thus inventoried, have been numbered and marked by the judge or the notary, as well as the number of papers contained in each bundle.

5 L. 434 ; 12 R. 155.

ART. 1099.—If there are in the succession effects which belong entirely to the deceased, and others which belong to him in part only, the judge or notary must make this distinction in the inventory.

He must also make mention of the effects and property which are claimed by third persons, as having been intrusted to the deceased to keep on deposit, consignment, or otherwise, all of which must be estimated with the effects of the succession, though they can be taken out of the inventory, if the claim to them is established.

17 L. 238 ; See 1 L. 179.

ART. 1100.—If there be due to the deceased any debts by verbal obligations, or the titles of which are not known in the succession at the time of the inventory, the judge or notary is bound to include them in the inventory among the active debts left by the deceased, if their existence has been proved to him, either by the titles which may be found elsewhere than among the effects of the succession, or by the testimony of witnesses, if the obligations have been verbal.

ART. 1101.—The public inventory, in fine, must be clothed with the following forms :

1. Mention must be paid therein of the name, surname, quality, and place of residence of the judge or notary who makes the inventory, of the witnesses who have assisted, of the appraisers who have valued the property, and of the parties, if any, at whose instance the inventory is made.

2. Mention must be made of the place where the inventory is made, of the day, month, and year in which it is commenced and finished ; and if the judge or notary has employed several days, sittings or vacations to make the inventory, the date of each must be mentioned.

3. The inventory must be terminated by a recapitulation of all the sums and amounts therein contained, so that the whole amount of the effects of the succession may be known.

4. Minutes must be kept of the inventory and be signed at each vacation, and at the end of the act, by the judge or notary who makes it, by the witnesses and party, if there be any ; if not mention must be made of the causes for which the witnesses and parties have not signed.

11 L. 149 ; See 1 L. 49.

ART. 1102.—The witnesses assisting at public inventories must be males of age, and domiciliated in the place where the inventories are made.

ART. 1103.—The inventories of successions by notaries public

must be registered with the judge of the place of the opening of the succession; and until then they are not admitted as proof in courts of justice.

ART. 1104.—When the deceased who has left a vacant succession or intestate heirs, all or part of whom are absent from, and not represented in, the State, has left effects in different places, the judges who have made inventories of these effects within their respective jurisdictions, are bound to address authentic copies thereof without delay to the place where the succession is opened; the expenses for these inventories and copies shall be paid from the first moneys realized from the succession.

§3.—*Of the Appointment of Curators to Successions, and of the Security they are bound to give.*

ART. 1105.—When any one dies leaving a vacant succession or heirs absent from, and not represented in, the State, all actions which could have been brought against the deceased, must be commenced or accumulated, and prosecuted before the judge of the place where the succession is opened, and brought against the curator appointed by the judge, as is hereafter prescribed.

10 R. 396.

ART. 1106.—He who claims the curatorship of a vacant succession, or one of which the heirs or part of them are absent and not represented, must present his petition to that effect to the judge of the place where the succession is opened.

10 R. 396.

ART. 1107.—The judge on receiving this request must give public notice thereof, with notice to all those who wish to make opposition thereto, to do it in ten days from the date of such notice.

5 N. S. 505.

ART. 1108.—The public notice to be given in this case, as in all other cases in which the law requires it to be given, must be by advertisement in English and French, posted at the doors of the church of the place or of the court-house where the judge who has given the order, holds his court. This is what is understood by advertisements at the usual places, words frequently made use of in the dispositions of the law.

ART. 1109.—Besides these advertisements, notice must be inserted in English and French, to wit: For New Orleans and places not more than one hundred miles distant therefrom, in two newspapers published there, and for places beyond that distance, in the newspaper, if any there be, which is published, at a distance not exceeding fifty miles from the place where the judge who has given the order, holds his sessions.

Stat. 1853, No. 255; 7 L. 395.

ART. 1110.—When the advertisements shall be published in the newspapers, as prescribed in the preceding article, they shall be inserted three different days before the expiration of the term fixed by law, if the term be of ten days, unless it be in places where the newspapers do not

appear often enough to repeat the advertisement as many times as is required by this article, in which case it will suffice if the advertisement be inserted as often as the gazette appears during that time.

For those advertisements, for which the term of thirty days is fixed, it suffices if they are published in the newspapers, as above prescribed, once a week during that time.

4 L. 383.

ART. 1111.—Whoever wishes to make opposition to a demand for the curatorship of a vacant succession or of absent heirs, must make it in ten days from the publication of the notice of the demand; otherwise it cannot be admitted.

4 L. 471; 10 R. 396; 4 A. 25.

ART. 1112.—The opposition must be written and signed by the party making it, or his attorney, and delivered at the office of the judge who has received the demand for the curatorship; it shall contain a brief statement of the reasons for which the party opposing claims the curatorship in preference to the party demanding it.

1 R. 461; See 10 R. 193.

ART. 1113.—The judge shall determine, in as summary a manner as possible, on this opposition.

But though his decision be subject to an appeal, the curator appointed by the judge may act as such, notwithstanding an appeal, if he give security, as is hereafter prescribed; and all the legal acts done in his capacity shall be valid, although his appointment be annulled on the appeal.

ART. 1114.—In contestations concerning the curatorship of vacant successions and those of absent heirs, the judge shall grant the curatorship:

To the surviving partner of the deceased, in preference to the heir present or represented, unless the partnership has been a commercial one.

To the heir present or represented, in preference to the surviving husband or wife, if the deceased was married.

To the surviving husband or wife in preference to the creditors of the deceased; to the creditors, in preference to those who are not.

4 L. 143, 569; 7 L. 395; 13 L. 77; 15 L. 527; 13 L. 494; 2 A. 97; 3 A. 261; 5 A. 27.

ART. 1115.—The partner or partners of a commercial house, having accounts to render to the heirs of their deceased partner, can in no case be appointed curators to the vacant succession or that of the absent heirs of the deceased. It must be given to a third person, the surviving partner or partners having the right to claim the privilege of liquidating the partnership concerns, as is hereafter established.

3 L. 471.

ART. 1116.—If several persons claim the curatorship, the judge is bound, except in those successions which do not exceed three thousand dollars in value, to give it to two of them and no more, provided they have the requisite qualifications, and offer sufficient security.

6 L. 443; 11 L. 289; 2 A. 97.

ART. 1117.—In the choice to be made among several persons, who

have equal rights to the curatorship, but who have claimed it at different times, the judge must give it to him or those who have first presented their demands, if they offer the necessary security.

3 L. 471; 11 L. 289; 2 A. 97.

ART. 1118.—In contestations relating to the curatorship of successions, the parties who have failed in their demands or oppositions, support the expense of them; but the costs incurred by the curator to cause himself to be appointed, are at the charge of the succession.

18 L. 493.

ART. 1119.—The curator of a vacant succession or of absent heirs, before he enters on the performance of his duties, must take an oath, before the judge who has appointed him, well and faithfully to discharge his duties as such, and give good and sufficient security for the fidelity of his administration.

5 N. S. 581; 11 L. 149; 1 A. 75; 3 A. 150; See 12 R. 238.

ART. 1120.—The security to be given by a curator of a vacant succession or absent heirs, when all the heirs are absent from and not represented in the State, is of one-fourth over and above the amount of the inventory, bad debts deducted.

4 N. S. 481; See 12 R. 238.

ART. 1121.—The security to be given by a curator of absent heirs, when he only represents a part of the heirs of the deceased, is of one-fourth over and above the amount of the portion coming to these heirs, according to the inventory of the succession, bad debts deducted.

ART. 1122.—No greater security can be required of the curator of a vacant succession or of absent heirs, than is required in the two preceding articles, unless new effects are discovered, which had not been included in the inventory.

ART. 1123.—The curator of a vacant succession or of absent heirs may, instead of the security required of him, give a special mortgage on real estate belonging to him, of a sufficient value, which is unincumbered and situated within the limits of the jurisdiction of the judge who has appointed him.

See 7 N. S. 294.

ART. 1124.—The property of the curators of vacant successions and of absent heirs, and that of their securities shall be no longer subject to any general or tacit mortgage for the fidelity of their administration.

Stat. 10th March, 1834, p. 113.—§ 5. Hereafter no notary, parish judge, or register of mortgages, in making a certificate of mortgage, shall mention in his certificate the fact of registration of the bond of any administrator, curator of vacant succession, or of absent heirs. The proper construction of the article one thousand one hundred and twenty-four of the Civil Code not giving to such bonds when registered the force of a mortgage.

ART. 1125.—If any one, after having demanded and obtained the curatorship of a vacant succession or of absent heirs, permits three

days to elapse after his appointment, without giving the security or special mortgage required by law, the judge shall, on motion of the counsel of the absent heirs, duly notified to the curator, declare him divested of his curatorship, and fill the vacancy in the same manner as curators are appointed.

§ 4.—*Of the Duties and Powers of Curators of Vacant Successions and of Absent Heirs.*

ART. 1126.—Every curator of a vacant succession or of absent heirs is bound, within ten days after his appointment, to give public notice to the creditors of the succession, that they may make themselves known, and present an account of their respective claims and the titles by which they are established.

19 L. 462.

ART. 1127.—Six months after his nomination, if the heirs do not appear in person or by attorney, the curator is bound to publish, in two of the newspapers printed at New Orleans, in English and French, a notice of the death of the deceased, whose succession he administers, making mention of the name and surname of the deceased, of his place of birth, if it be known, of the place of his decease, and of the opening of his succession; and the curator shall subjoin to this notice his own name and address.

ART. 1128.—If the deceased was in community or partnership with any one who has survived him, the curator of the vacant succession or of absent heirs is bound, immediately after his appointment, to sue for a partition, in order that the part which belonged to the deceased in the community or partnership property, be ascertained.

19 L. 462; 3 R. 262.

ART. 1129.—When any one of the heirs of the deceased is present or represented in the State, the curator of the heirs who are absent from and not represented in the State, is bound in the same manner as is prescribed in the preceding article, to sue for a partition in order to ascertain the part coming to the heirs represented by him.

2 A. 466.

ART. 1130.—Suits for partition must be instituted before the judge of the place where the succession is opened, and the co-proprietors and partners of the deceased, as well as his heirs, present and represented, must be cited to appear before the judge in such suits, though their domicile or ordinary place of residence be out of the jurisdiction of the judge.

ART. 1131.—If there be a commercial partnership, in which the deceased was concerned, the surviving partner, after the portion of the deceased in the partnership effects has been ascertained, and the estimate of it made on the inventory, shall have a right to require that this portion remain with his own, in order that the whole may be disposed of for the common profit in the ordinary course of trade, and the proceeds applied, as far as is necessary, to the payment of the partnership debts.

3 L. 274, 357; 7 L. 194; 3 R. 44; See 2 L. 183.

ART. 1132.—This right cannot be refused to the surviving partner, if the succession of the deceased partner is vacant, or if all his heirs are absent and not represented; but the surviving partner is bound to give security to the curator of the vacant succession, or of absent heirs, to the amount of one-fourth over and above the estimated value of the portion which was coming to the deceased from the partnership property, according to the inventory.

3 L. 274, 357; 7 L. 194; 3 R. 44; 11 L. 195; See 2 L. 188.

ART. 1133.—The surviving partner, who has thus obtained the administration of the partnership effects, has but one year from the day this administration has been given to him, to sell those effects according to the usual course of trade, and to settle the partnership concerns.

After this time, he is bound to render an account of his administration to the curator of the vacant succession, or of the absent heirs of his deceased partner, and to pay to him the part due to the heirs on the settlement of the partnership concerns.

ART. 1134.—During the time the administration of the surviving partner continues, the curator of the vacant succession or of the absent heirs of the deceased has a right to demand from him, from time to time, an account of his situation, and to exercise over the partnership affairs the same superintendence, which the deceased, during his life, could have exercised.

3 L. 274.

ART. 1135.—The surviving partner, who has thus administered the partnership concerns and liquidated them, has no right to any commission therefor.

But lawful and necessary expenses incurred for the advantage of the partnership, during this administration, are borne by the succession in proportion to the interest of the succession in the partnership.

ART. 1136.—If any one of the heirs of the deceased partner is present or represented in the State, the surviving partner has no right to retain his part of the partnership property, no more than the parts of the other heirs who are absent, if the heir opposes it and accepts the succession purely and simply; unless in the act of partnership it be stipulated that the surviving partner shall be intrusted with the liquidation of the partnership concerns, for in this case, such a stipulation must be carried into effect.

1 L. 384.

ART. 1137.—Except in the case in which the surviving partner of a commercial house obtains the administration of the partnership property, as is established in the preceding articles, the property, which the deceased possessed in common or in partnership with others, must be divided, either in kind or by sale, as the judge, before whom the suit for partition is brought, may order.

3 R. 44.

ART. 1138.—Whether this partition be made in kind or by sale, it must be made in the manner and form prescribed in the laws of this title, relative to judicial partitions.

ART. 1139.—Every curator of vacant successions or of absent heirs is prohibited from purchasing by himself or by means of a third person

any property movable or immovable intrusted to his administration, under the pain of nullity and responsibility for all damages caused thereby.

Stat. 20 March, 1840, p. 123.—§ 1. Nothing contained in articles eleven hundred and thirty-nine and seventeen hundred and eighty-four of the Civil Code or in any other articles of the Civil Code or Code of Practice, shall be so construed as to prevent any executor, executrix, administrator or administratrix, curator or curatrix of vacant successions, from purchasing at the sale of the effects of the deceased whose estate they may respectively represent when the said executor, executrix, administrator or administratrix, curator or curatrix is the surviving partner in community or an heir or legatee of the said deceased, and all purchases so made shall be considered as valid and binding as though the same had been made by any disinterested third party or parties.

§ 2. All purchases which shall have been heretofore made at the sale of the effects of the succession of any deceased person, by the executor, executrix, administratrix or administratrix, curator or curatrix of said deceased's estate, when the said executor, executrix, administrator or administratrix, curator or curatrix shall have been the surviving partner in community, heir or legatee of the said deceased, shall be considered as valid and binding as though the same had been made by any person or persons legally capable of contracting; Provided however, that any person or persons who shall wish to avail themselves of any informality in said sale or sales, by reason of the incompetency or legal disability resulting from the incapacity as aforesaid, of the person or persons having purchased so to purchase, shall be allowed to institute action to set aside said sale or sales by reason of said incompetency or legal disability as aforesaid, resulting from the incapacity of the person or persons purchasing so to purchase, within two years from the date of the passage of this act.

§ 3. No exception shall lie against the validity of titles to property, real or personal, so acquired as aforesaid, on any of the grounds heretofore enumerated, unless it shall appear to the court before whom said exception is pleaded, that a suit or suits have been instituted to set the same aside within two years after the passage of this act.

§ 4. The provisions of the second and third sections of this act, shall apply and have full force against minors, interdicted persons and married women, saving to them their recourse against their tutors, curators or other legal representatives, should they be able to make it appear that they have suffered any loss or damage.

14 L. 111; 1 A. 129; 3 A. 533.

ART. 1140.—Every curator of a vacant succession or of absent heirs is bound to take care of the effects intrusted to him as a prudent administrator, and to render an exact and faithful account of the fruits and revenues they produce. He is responsible for all damages caused by his misconduct.

19 L. 462.

ART. 1141.—A curator of a vacant succession or of absent heirs owes no interest on the sums of money in his hands, belonging to the succession which he administers, but he is forbidden from using them on

his private account, under the pain of dismissal and responsibility for all damages caused thereby.

3 L. 191; 3 A. 353.

ART. 1142.—Curators of vacant succession and of absent heirs are bound to keep a book containing the accounts of their administration, which they shall cause to be *paraphed* at the beginning and at the end, each page to be numbered by the judge who has appointed them, or by his clerk, in which they shall state, in the order of their dates, the sums they may receive or pay for the account of the succession they administer, or the heir they represent; and also the debts which the succession owes, according to their best information.

Stat. 13 March, 1837, p. 95.—§ 3. All executors, administrators, curators and syndics, shall deposit all moneys heretofore collected by them as such, and all the moneys hereafter collected, as soon as the same shall come into their hands, in one of the chartered banks of this State or in one of their branches allowing interest on deposits, if there be one in the parish, and shall keep a bank book in his official name and character, and shall on no account remove or withdraw said deposits or any part thereof, until a tableau of distribution shall be homologated, or unless ordered by a competent court, and then only to pay such debts as may be ordered for payment; and if any executor, administrator, curator of a vacant succession or syndie, shall fail to comply with the provisions of this section, and proof shall be made thereof by any creditor or other person interested, which proof may be administered on simple motion after ten days' notice, which motion may be filed in the clerk's office at any time, then such executor, administrator, curator or syndie, shall be condemned jointly and severally with his security or securities, to pay to the use of the estate twenty per cent. per annum interest, on the amount not so deposited or withdrawn without order, besides all special damage suffered, and shall be dismissed from office as executor, administrator, curator or syndie, as the case may be.

§ 4. Any creditor or other person interested, may at the regular sittings of the courts in New Orleans, and in the country, as well during the vacation as the sitting of the court having jurisdiction, file in the clerk's office a motion to know whether any executor, administrator, curator or syndie, has any funds; and such executor, administrator, curator or syndie, shall be bound within ten days to file a true statement of his account with the bank showing the amount of funds collected by him, and on failure so to do, such executor, administrator, curator or syndie, shall be dismissed from office, and pay ten per cent. per annum interest, on any sums for which he may be responsible.

ART. 1143.—The exhibition of these books, thus kept by these curators, may be ordered by the judge who has appointed them, as often as he shall think proper, or as he may be required to order it by a creditor of the succession, or by the counsel of the absent heirs of the deceased.

ART. 1144.—The curator of a vacant succession or of absent heirs, who wishes to absent himself from the State for a time that exceeds the

legal term of his administration, must cause his place to be filled by some other, and render an account of his administration to the judge who has appointed him; otherwise he may be compelled to give security not to depart without rendering his account and paying the balance due, if there be any.

10 L. 435; 17 L. 537.

ART. 1145.—The curator, who only wishes to be absent for a time, ought not to lose his curatorship on that account: provided he leave with some person residing in the place, where the succession is opened, his general and special power of attorney, to represent him in all the acts of his administration as curator, and deposit an authentic copy of this power of attorney, before his departure, in the office of the judge who has appointed him.

Stat. 24th April, 1847, p. 115.—The article of the Civil Code eleven hundred and forty-five, that reads as follows, to wit: "The curator who only wishes to be absent for a time, ought not to lose his curatorship on that account; provided he leave with some person residing in the place where the succession is opened, his general and special power of attorney, to represent him in all acts of his administration as curator, and deposit an authentic copy of this power of attorney before his departure, in the office of the judge who has appointed him," be so amended as to read thus: Curators, administrators, tutors and testamentary executors, who only wish to be absent for a time, ought not to lose their administration of said successions on that account; provided they leave with some person residing in the parish, or in an adjoining parish, where the succession is opened, a general and special power of attorney to represent them in all the acts of their administration as curator, administrator, tutor and testamentary executor, and deposit an authentic copy of the power of attorney before his departure, in the office of the recorder of mortgages in and for the parish where said succession has been opened, which power of attorney shall be duly registered.

ART. 1146.—The curators of vacant successions and of absent heirs act in their names and quality, in all contracts or other proceedings, in which the succession or the heirs which they represent are interested, and appear, in all suits, in which they are obliged to act in that capacity, either as plaintiffs or as defendants.

ART. 1147.—The powers of curators of vacant successions and of absent heirs, when the latter are all absent from and not represented in the State, extend to all the effects of the succession.

ART. 1148.—The powers of curators of absent heirs, who only represent some of the heirs of the deceased, extend only to the portion which come to these heirs by the partition made of the effects of the succession.

Until this partition is made, these curators have no other power over the effects of the succession than that which a co-proprietor has over the undivided property which he possesses in common with other persons.

10 E. 457.

§ 5.—*Of the Causes for which a Curator of a Succession may be dismissed or superseded.*

ART. 1149.—The curator of a vacant succession or of absent heirs must be dismissed by the judge who has appointed him :

1. If he is unfaithful in his administration, or if it be proved that he has made use of moneys intrusted to him as curator for his private account ;

2. If he absent himself for a time exceeding the legal term of his administration, without having provided for his place being filled by another, and rendered his account ;

3. If he absent himself for a time from the State without having left a special power of attorney with some one to represent him in his administration as curator, and the succession suffers any injury thereby ;

4. If the judge of the place where the succession is opened, orders him to produce his account book, which he ought to keep for the succession, and he refuses or neglects to obey this order.

2 L. 268.

ART. 1150.—The curator may be superseded by the judge who has appointed him :

1. If, three days after having been appointed curator, he refuses or neglects to give the security required of him by law ;

2. If, after his appointment, he has failed or obtained a respite from his creditors ;

3. If, in his administration, he commits any faults which prove his incapacity or negligence.

ART. 1151. In those cases, in which the judge shall think there is reason to dismiss or supersede a curator of a vacant succession or of absent heirs, or shall be required to dismiss or supersede him by any party interested, he is bound to charge the counsel of the absent heirs to institute a suit to that effect before him, and the counsel is bound to institute it accordingly.

The decision of the judge on this question is subject to an appeal, but may be previously executed notwithstanding the appeal.

2 L. 266 ; 10 E. 457.

ART. 1152.—In all cases of appeal to the supreme court from the decisions relating to the administration of the property of minors, of persons interdicted, or of absent persons, the amount of value of the succession or of the property administered, shall determine whether that court has jurisdiction or not.

3 L. 446.

§ 6.—*Of the Sale of the Effects and of the Settlement of Successions administered by Curators.*

ART. 1153.—When there are in a vacant succession, or a succession in which the heirs or part of them are absent from and not represented in the State, movable effects which are perishable or costly to keep, the judge of the place where the succession is opened, can, before a curator

is appointed, order the sale of them in the form and manner hereafter prescribed.

19 L. 462.

ART. 1154.—The curator is bound, in ten days after his appointment, to demand that all the remaining movable effects and all the slaves not employed in the cultivation of land belonging to the estate, found in the succession intrusted to his administration, be sold.

5 L. 463.

ART. 1155.—With respect to real estate belonging to the succession, and slaves employed in cultivating it, the curator is bound to wait thirty days after his appointment, before he demands the sale of them, in order that he may know, from the information he may get concerning the debts of the succession, if it be necessary to sell them in order to pay the debts.

10 R. 396; See 11 L. 149.

ART. 1156.—At the expiration of the thirty days, if the amount of debts known is such that it is necessary to sell the whole or a part of the real estate and slaves employed in agriculture, which belong to the succession, the curator shall present his petition to the judge who has appointed him, to obtain an order for the sale of this property, or of such a part of it as may be necessary to pay the debts of the succession.

10 R. 396.

ART. 1157.—This petition of the curator must be notified to the counsel of the absent heirs, and the judge, after having heard him, shall order the sale of all or such part of the real estate or of the slaves employed in agriculture, which belong to the succession, as may appear to him necessary in order to discharge the debts; and if the sale of the whole is not indispensable for this purpose, he shall order the sale of the slaves in preference to that of the real estate.

2 A. 966.

ART. 1158.—If it is not necessary to sell the property and the slaves engaged in agriculture, belonging to the succession, in order to pay the debts, they must be preserved, and administered by the curator for the account of the absent heirs, until they present themselves or send their powers of attorney, or until the expiration of the time when the law requires them to be sold, as is prescribed hereafter.

ART. 1159.—In all cases in which the sale is ordered of property belonging to vacant successions or to those of which any of the heirs are absent from and not represented in the State, the sale shall be made at public auction to the last and highest bidder, after the advertisements and publications required by law, to wit: ten days for movables, and thirty days for real estate and slaves.

1 N. S. 324; 4 L. 467; See 8 L. 321.

ART. 1160.—If the succession which is administered by a curator, is insolvent, and the property is not sufficient to pay the debts which are known, the curator is bound to apply to the judge who has appointed him for an order for a meeting of the creditors of the succession, at the office of some notary, who shall be named for that purpose, in order to deliberate on the most advantageous manner of selling the effects of the succession.

Stat. 29th March, 1826, p. 140.—§ 7. Whenever a succession shall have been accepted under the benefit of an inventory, and neither the beneficiary heir or heirs, their attorney in fact, tutor, or curator, will accept the administration and give the security required by law, and if after fifteen days' notice given by order of the judge, in the usual manner, no one presents himself to administer upon the said estate, on giving the security required, the judge of the court of probates shall order a meeting of the creditors of such succession to be held at the office of a notary public, for the purpose of electing syndics to administer the property of such succession: The same deliberation shall prevail in the choice of syndics in such cases, as in the choice of syndics to administer estates ceded by insolvent debtors, and the property of such succession shall be sold, disposed of, and administered according to the rules prescribed by this act, and the act to which this is a supplement, for the administration of estates so ceded, saving and reserving to the beneficiary heir or heirs all their rights and claims as creditors of such succession, and their rights to any surplus which may remain after paying the debts of the succession: *Provided*, that nothing herein contained shall be so construed as to apply to successions not amounting to the sum of five hundred dollars, for the summary settlement of which it is provided by the Civil Code.

§ 8. In all cases where the heirs of any person deceased shall have renounced his succession, it shall be the duty of the judge of the court of probates to order a meeting of the creditors of such succession to be held at the office of a notary public, for the purpose of determining upon what terms and conditions the property belonging to such succession shall be sold, and appointing syndics to administer the same: The proceedings relative to the property of a succession so renounced, shall in all respects be conformable to those prescribed by this act, and the act to which this is a supplement, for the administration of property ceded by insolvent debtors.

§ 9. In all cases of cessions of property by insolvent debtors, and in all cases of renunciations of successions by the heirs, if there shall remain a surplus after payment of all the debts, the same shall be paid over to the ceding debtor or debtors, their heirs or assigns, or to the heirs who have made the renunciation, their heirs or assigns, as the case may be.

§ 10. In all cases where the property of a succession shall be administered by syndics under the provisions of this act, the judge of the court of probates shall order to be paid such reasonable sum of money as to him shall appear proper for the maintenance of the heirs, being children of the deceased, for the period of one year, and until their claims against the succession shall be ascertained and paid.

§ 11. The judge who may order a meeting of creditors under the provisions of this act, and of the act to which this is a supplement, may direct such meeting to be held in ten days from the time of making such order, provided it shall be made to appear to the judge that the creditors residing in this State, but out of the parish, are duly represented in said parish.

ART. 1161.—This meeting shall be called by citation to the creditors who reside in the State, in ten days, if all the creditors reside within the jurisdiction of the judge who grants the order, and in thirty days, if any of them reside out of his jurisdiction.

ART. 1162.—Notice of the meeting shall besides be given by advertisements in the usual places, and publications in the newspapers in the cases required by law; and if there be creditors absent from the State, there shall be appointed a counsel to represent them in the meeting of the creditors, and in the acts which may grow out of it.

ART. 1163.—If, at the meeting of the creditors thus assembled, the creditors by privilege or mortgage require that the sale of the effects be made for cash, their wish, in this respect, shall prevail over that of the other creditors.

But as to the ordinary creditors, if a majority of them in amount or in number, if their debts on the one side and on the other are equal, wish that the sale be made on certain terms of credit, the opinion of this majority prevails.

5 R. 96; 10 R. 457; C. P. 990, 992, 995.

ART. 1164.—When the creditors have thus given their opinion, the curator shall deposit a copy of the proceedings at the court of the judge who has ordered the meeting, and demand the homologation of them.

2 A. 782; See 11 L. 153.

ART. 1165.—The judge, on homologating the proceedings, is bound to order to be sold for cash so much of the property of the succession as will be sufficient to pay the creditors by privilege or mortgage, with interest and costs, if they require the sale to be thus made.

But with regard to the excess of the price of the sale of the property above the sum necessary to pay the privilege and mortgage creditors, the judge shall grant such terms of credit, and exact such security for the payment as the majority of the ordinary creditors shall have determined upon, as is before said.

ART. 1166.—In case of a vacant succession, or of a succession of which all or a part of the heirs are absent from and not represented in the State, when the succession is administered by a curator, the creditors are not permitted to appoint syndics under the pretext that the succession is insolvent, the curator supplying the place of syndie in this respect.

13 L. 58; See amendment to Art. 1160, § 7.

ART. 1167.—The curator of a vacant succession or of absent heirs cannot pay the debts of the succession, save some privileged debts excepted by law, until three months after the succession is opened, and only in the manner prescribed in the following articles.

8 L. 360; 19 L. 462; 12 R. 511.

ART. 1168.—When the time for the payment of the debts of the succession is arrived, if the curator has sufficient funds to pay all the creditors who have presented themselves or made themselves known, with interest and costs, he is bound to present his petition to the judge

who has appointed him, to be authorized to pay the creditors according to a statement which he shall annex to his petition, mentioning the names and places of residence of the creditors, and the several sums due to each.

1 A. 92; 2 A. 895; 19 L. 462; See S L. 506; S R. 121; 12 R. 88, 511.

ART. 1169.—If, on the contrary, the curator has not sufficient funds to pay all the creditors of the succession, he shall annex to his petition a tableau of the distribution which he makes of the funds in his hands among the creditors, according to the order of their privileges and mortgages, or by contribution among the ordinary creditors, and shall conclude with a prayer to be authorized to pay them according to this tableau.

19 L. 462; 1 A. 92; 2 A. 895; See S R. 121; 12 R. 88.

ART. 1170.—The curator shall include in the statement of payments or tableau of distribution the creditors whose debts are not yet liquidated, for the amount by them claimed, saving the right of retaining in his hands the sums for which they are placed on the statement or tableau, until it be determined by a final judgment what is due them.

2 A. 895; 19 L. 462.

ART. 1171.—If it be proved to the judge by the oath of one or two credible witnesses that there are absent creditors who, from the distance of their place of residence, have not had time to make themselves known, the judge shall order the curator to include these creditors among those who are to be paid, for the sums declared to be due by such witnesses.

ART. 1172.—The judge to whom the curator shall apply to be authorized to pay the creditors according to the statement or tableau which he has presented, shall order that public notice be given of this request by advertisements at the usual places and publications in the newspapers, in the cases prescribed by law, requiring all those whom it may concern, to make opposition, if they think fit, in ten days from the day in which such notice is given, to the application being granted.

6 L. 222; 19 L. 462; See S R. 121.

ART. 1173.—If no opposition be made within the time before mentioned, the judge shall grant to the curator the authorization he has requested, and the curator shall proceed immediately to pay, according to this authorization, all the creditors whose debts are liquidated or acknowledged.

With respect to those creditors whose debts are not liquidated, he shall retain in his hands the sums for which they have been placed upon the statement or tableau, until the amount due is settled by a definitive judgment.

ART. 1174.—If, on the contrary, opposition be made to the granting of the authorization applied for, the judge shall determine thereon in a summary manner.

ART. 1175.—If the decision of the judge thereon be appealed from, the curator is bound to retain a sufficient sum to satisfy the claims on which the opposition is made, with interest and costs, but cannot, under the pretext of this appeal, refuse to distribute among the creditors,

whose debts or privileges are not contested, the surplus remaining after this sum being retained.

ART. 1176.—If, after the creditors of the succession have been paid by the curator, in conformity with the dispositions of the preceding articles, creditors present themselves who have not made themselves known before, and if there does not remain in the hands of the curator a sum sufficient to pay what is due them, in whole or in part, these creditors have an action against those who have been paid, to compel them to refund the proportion they are bound to contribute, in order to give the new creditors a part equal to that which they would have received had they presented themselves at the time of the payment of the debts of the succession.

But this action on the part of the creditors who have not been paid, against the creditors who have been, is prescribed by the lapse of three years, counting from the date of the order or judgment, in virtue of which the judgment has been made.

In all these cases, the creditors who have lately presented themselves, can in no manner disturb the curator on account of the payments he has made under the authorization of the judge, as before stated.

5 L. 468; 12 R. 507; 4 A. 324; 5 A. 38.

ART. 1177.—Notwithstanding the provisions of the preceding articles, curators of vacant successions are bound, as soon as they have sufficient funds in hand, and without any delay, to pay the funeral expenses, costs of court, and the expenses of the last sickness of the deceased, or other debts, the payment of which cannot be retarded, provided the accounts of these charges be approved by the judge who appointed them, and an order be given him for their payment.

ART. 1178.—If a succession is so small or is so much in debt that no one will accept the curatorship of it, the judge of the place where the succession is opened, after having made an inventory of the effects composing it, shall sell it and apply the proceeds thereof to the payment of the debts of the deceased, in the same manner as a curator would have done, had one been appointed.

Stat. 17, January, 1838, p. 5.—§ 1.—That the article eleven hundred and seventy-eight of the Civil Code of the State of Louisiana, be so amended that whenever satisfactory proof shall have been made to any judge of the court of probates, that a succession is so small, or is so much in debt, that no person will apply for, or be willing to accept the curatorship, on complying with the existing laws on this subject, the judge of the court of probates where such succession is opened, shall have the power without any previous notice or advertisement to confer the curatorship of such succession on such person as he may think proper. That the curator so appointed, shall cause the effects of said succession to be sold, and the proceeds to be applied to the payment of the debts of the deceased; the whole to be done in as summary a manner as possible, to diminish costs, and under the immediate direction of the judge of the court of probates; such curator to be allowed a reasonable compensation for his services; and shall not be compelled to furnish bond and security, *except* in cases where the judge shall deem it necessary, and that in all cases the judge of the court of probates shall fix the compensation of the curator, and the amount of security, when he

requires it, *provided* that this law shall not apply to successions amounting to upwards of five hundred dollars.

12 L. 118; 1 R. 559.

§ 7.—*Of the Account to be rendered by the Curators, and the Commission due to them.*

ART. 1179.—The time for the administration of the curators of vacant successions or of absent heirs, when these heirs have not appeared or have not sent their powers of attorney to claim the succession, is fixed at one year from the day of their appointment.

But the administration may be continued beyond this term as is hereafter prescribed.

Stat. 13, March, 1837, p. 96.—§ 7.—All executors, administrators, curators, and syndics, shall continue in office until the estate shall be finally wound up, any law to the contrary notwithstanding; *provided* that any creditor or person interested, shall have the right to require that such executor, administrator, or curator, shall give new or additional security for the faithful performance of his duties, as often as once in every twelve months, and oftener if the court, on motion to that effect, may judge it to be necessary to the interest of the estate or the creditors so to do.

5 N. S. 419; 1 A. 92.

ART. 1180.—The duties of curators cease even before the term fixed for their administration, when the heirs or other persons having a right to the succession administered by them, present themselves or send their powers of attorney to claim the succession.

4 L. 565; 3 N. S. 601; 8 N. S. 293.

ART. 1181.—When the heirs, or other persons having a right to the succession, present themselves, or send their powers of attorney to claim it, they are bound to cause themselves to be recognized as such, and shall be put into possession by the judge of the place where the succession is opened, after having cited the curator who has been appointed for the succession.

9 L. 251; 11 L. 179; See 4 R. 42.

ART. 1182.—As soon as the heir or his attorney in fact has been thus put into possession of the succession or of the effects claimed by him, the curator is bound to render a faithful and exact account of his administration to him, and to pay the balance due, deducting a commission of two and a half per cent. on the amount of the effects of the succession, or of the portion by him administered, according to the inventory, not taken into the estimate the bad debts.

3 N. S. 463; See 12 L. 608.

ART. 1183.—When the heirs do not present themselves nor send their powers of attorney to claim the succession, it is the duty of all the curators of vacant successions or of absent heirs, one year after their nomination, to render an account of their administration to the judge, at the instance of the counsel of the absent heirs.

ART. 1184.—When the balance of the account thus rendered by curators has been determined by a final judgment, they are bound, within thirty days from the date thereof, to pay the same into the hands of the treasurer of the State, who shall deliver to them duplicate receipts, making mention of the sum received, and the name of the succession or heirs on whose account it has been paid.

ART. 1185.—It is the duty of the judge who has thus definitively fixed the balance due by curators of vacant successions and of absent heirs, within fifteen days at farthest, from the date of the judgment thereon rendered, to address a copy thereof to the treasurer of the State, in order that this officer may know the amount to be paid into his hands.

The judge shall therefore allow in the accounts of these curators, the costs to be incurred for the copy of the judgment to be addressed to the treasurer of the State, and that which is to be delivered to the curator to authorize him to pay the balance due.

ART. 1186.—The curator who has paid the balance of his account into the hands of the treasurer of the State shall deposit one of the receipts delivered to him in the court of the judge, and it is only on the exhibition of this receipt that he can cause himself to be discharged from his administration by the judge, and obtain a release of the security or mortgage he has given for his administration.

ART. 1187.—If, at the rendition of this account by the curator to the judge, at the end of the year after his appointment, the judge be satisfied that the succession is entirely settled, and that it is not necessary to prolong the administration, he shall allow the curator a commission of two and a half per cent. on the amount of the inventory of the effects of the succession, or of the portion by him administered, deducting the bad debts.

12 L. 608; 3 A. 624; See 5 N. S. 229; 3 L. 464; 4 A. 386; Arts. 1062, 1188, 1676.

ART. 1188.—But if it appears to the judge that the succession is not entirely settled, and that it will be necessary to prolong the administration, he shall only allow the curator the commission of two and a half per cent. on the sums received or recovered by him during his administration.

3 A. 624.

ART. 1189.—The commission allowed to curators of vacant successions and of absent heirs, is calculated on the whole amount of the effects of the succession, deducting bad debts, if the succession is vacant, or if all the heirs are absent from, and not represented in, the State.

But when there are only some of the heirs who are absent from, and not represented in, the State, the commission allowed to the curator is calculated on the portion of the effects of the succession coming to those heirs according to the estimate in the inventory, deducting bad debts.

5 N. S. 62, 223.

ART. 1190.—If there are two curators to the same vacant succession or the same absent heirs, they divide the commission, and no augmentation thereof can, under any pretence, be allowed.

ART. 1191.—When a vacant succession, or one of which the heirs or part of them are absent from, and not represented in the State, has been definitively settled, if there remain in the hands of the curator any titles or papers belonging to the succession or the heirs, the judge shall order them to be deposited in court, in order that they may be delivered to the heirs or their attorneys in fact.

ART. 1192.—The funds of vacant successions or absent heirs, paid into the treasury of the State, remain in deposit, until claimed by the heirs of those having a right to them.

These funds may be made use of, but their reimbursement is provided for and guaranteed on the faith of the State, so that the heirs who present themselves, shall meet with no delay in receiving them.

3 A. 355.

ART. 1193.—If, after the payment into the hands of the treasurer of the State, and the discharge of the curator, any one presents himself, having the right to claim the succession or the payment of any debts due him by the deceased, such heir or creditor must cause his quality to be recognized, or his debt to be liquidated before the judge of the place where the succession has been opened, after having cited the counsel of the absent heirs.

ART. 1194.—If the demand of the person claiming the succession or the portion of it administered by the curator, be established by a judgment, the treasurer of the State shall pay to such person, on his exhibiting an authentic copy of the judgment, the amount belonging to the succession deposited in the treasury.

ART. 1195.—If it be a mere debt claimed by one of the creditors of the succession, the treasurer of the State shall pay the amount thereof to the creditor out of the funds deposited in the treasury belonging to the succession, on the exhibition of an authentic copy of the judgment establishing his debt, as is before said.

ART. 1196.—If curators of vacant successions or of absent heirs neglect, during three months from the date of the judgment rendered on their accounts, to pay the balance into the hands of the treasurer of the State, it is his duty to denounce them to the attorney-general or district attorney of the place of their residence, who is bound to sue them and their securities to compel the payment of this balance, with interest from the day on which they were bound by law to make such payment.

3 A. 355.

§ 8.—*Of the Duties of Curators, whose Administration is prolonged beyond the Legal Term.*

ART. 1197.—If, at the expiration of the year after the curator of a vacant succession or of absent heirs has been appointed, the affairs of the succession are not settled, the judge may, if he thinks the interest of the succession requires it, prolong the administration for one year more, and thus from year to year during five years from the opening of the succession.

9 L. 281; 2 R. 351; See 12 R. 507.

ART. 1198.—Though the administration of the curator be prolonged, he is not the less bound to render his account every year to the judge, and to pay the balance in his hands to the treasurer of the State, according to the provisions contained in the preceding paragraph.

9 L. 281.

ART. 1199.—The judge who prolongs the administration of a vacant succession or of absent heirs beyond a year, is bound, every year of the prolongation thus granted, to exact from the curator a renewal of the security which he has given for the fidelity of his administration. But in this case the judge cannot require from the curator security for more than one-fourth beyond the estimated value of the property left under his administration.

ART. 1200.—The curator whose administration has been prolonged, has the right, on the account which he renders each year of his administration, to deduct a commission of two and a half per cent. on what he has received or recovered during the preceding year.

ART. 1201.—If the curator of a vacant succession or of absent heirs, who has been first appointed, will not continue to act, or if he dies, absents himself, or is, by other means, prevented from performing his duties, the judge of the place where the succession is opened, may, if he thinks it necessary to the interests of the succession, appoint another curator to finish the settlement of the estate.

In this case the appointment must be made according to the same rules as are prescribed for the appointment of curators of vacant successions and absent heirs, and these new curators have the same duties to perform and enjoy the same rights as the curator, whose administration is prolonged beyond the year.

ART. 1202.—If, at the expiration of a year from the appointment of a curator of a vacant succession or absent heirs, there be real estate or slaves belonging to the succession, which have not been sold, the judge is bound, on the request of the curator, to order the sale of them to be made at public auction, at the periods and after the advertisements and publications prescribed by law, at one or two years credit, and with the proper securities.

Instead of "one 'or' two years credit," read "one 'and' two years." See French text.

ART. 1203.—Before proceeding to this sale, the judge is bound to cause the property to be disposed of according to the preceding article

to be estimated by experts by him appointed and sworn, and if, at the sale, two-thirds of the estimated value be not offered for it, the sale shall be suspended, and the curator is bound to have it again exposed, after the same time of notice, advertisements and publications prescribed by law, at one, two, and three years' credit; but then the property must be sold at the price offered.

§ 9.—*Of the Appointment of Counsel of Absent Heirs, and of their Duties.*

ART. 1204.—On the opening of a vacant succession, or of one of which the heirs or part of them are absent from and not represented in the State, it is the duty of the judges who have inventories to make of the effects of these successions, to appoint a counsel to the absent heirs to assist at these inventories.

11 L. 149; 12 L. 73; 15 L. 66, 527; 18 L. 570.

ART. 1205.—The counsel to the absent heirs, who is appointed by the judge of the place where the succession is opened, must, if possible, be an attorney admitted to practise in the courts of this State, and it is his duty to represent the absent heirs, not only in the inventory, but in all the acts required by law to be done.

5 L. 472.

ART. 1206.—The counsel appointed by the judge must, immediately after his appointment, search among the papers of the deceased, and get all the information he can, to assure himself of the place of birth of the deceased, and where his heirs reside, in order to correspond with them and give them notice of the death of the deceased, of the name and residence of the curator appointed to his succession, and the state in which his affairs are left.

ART. 1207.—If, in the interval between the opening of the succession and the appointment of the curator, there are any conservatory acts to be performed, or suits to be instituted, the delay of which may injure the succession, the counsel of the absent heirs shall be authorized to perform such acts, or institute such suits before any court, on proving his appointment by the certificate thereof under the seal of the court which has appointed him.

5 N. S. 11.

ART. 1208.—When a suit has been instituted by the counsel of the absent heirs of a succession, in conformity with the provisions of the preceding article, and judgment has not been rendered therein at the time the curator is appointed, the curator shall not be obliged to recommence the suit, but may continue it as it is, substituting his name for that of the counsel of the absent heirs, who has commenced it.

See 1 N. S. 633.

ART. 1209.—The counsel of the absent heirs cannot, if he be an attorney, be engaged in any suit against the heirs whom he represents, as

long as the succession, to which these heirs have a right, is administered by a curator judicially appointed.

ART. 1210.—The counsel of the absent heirs shall continue to act as such until the heirs present themselves or send their powers of attorney to claim the succession, or until the curator is finally discharged.

6 L. 653; 18 L. 570; 1 R. 514.

ART. 1211.—Nevertheless, the counsel of the absent heirs may cause himself to be discharged by the judge who has appointed him, if he is prevented, by any good cause, from performing the duties thereof.

1 L. 45.

ART. 1212.—If the counsel of absent heirs dies, absents himself or is discharged, the judge is bound to appoint another counsel of absent heirs in his stead.

ART. 1213.—The counsel of absent heirs have a right to receive fees or emoluments proportioned to the pains taken in the performance of their duties, out of the funds of the succession of which they represent the heirs, but those fees or emoluments shall not be granted to them, except on proof being made of the services by them rendered, and of the value thereof, after having cited the heirs, if they present themselves, or the curator appointed to the succession in which these heirs have rights.

4 L. 434.

CHAPTER VIII.

OF PARTITION, AND OF THE COLLATION OF GOODS.

SECTION I.—*Of the Partition of Successions.*

§ 1.—*Of the Nature of Partition, and of its Several Kinds.*

ART. 1214.—When a person, at his decease, leaves several heirs, each of them becomes an undivided proprietor of the effects of the succession, for the part or portion coming to him, which forms among the heirs a community of property, as long as it remains undivided.

5 A. 561.

ART. 1215.—No one can be compelled to hold property with another, unless the contrary has been agreed upon; any one has a right to demand the division of a thing held in common, by the action of petition.

The last word of this article should evidently be "*partition*;" See French text; See 3 R. 43.

ART. 1216.—The partition of a succession is the division of the effects, of which the succession is composed, among all the co-heirs, according to their respective rights.

ART. 1217.—Partition is voluntary or judicial :

It is voluntary, when it is made among all the co-heirs present and of age, and by their mutual consent ;

It is judicial, when it is made by the authority of a court, and according to the formalities prescribed by law.

8 L. 262; 10 L. 454; See 11 M. 443.

ART. 1218.—Every partition is either definitive or provisional :

Definitive partition is that which is made in a permanent and irrevocable manner ;

Provisional partition is that which is made provisionally, either of certain things before the rest can be divided, or even of every thing that is to be divided, when the parties are not in a situation to make an irrevocable partition.

ART. 1219.—By definitive partition is also understood the judicial partition, made according to law; and by provisional partition, that in which the formalities prescribed by law have not been observed, or that by which the parties are not definitively bound.

7 L. 156; See 11 L. 494.

ART. 1220.—It cannot be stipulated that there never shall be a partition of a succession or of a thing held in common. Such a stipulation would be null and of no effect.

ART. 1221.—Nevertheless, the co-heirs can agree that there shall not be a partition of the effects of the succession for a certain limited time, and such an agreement will be valid ; but it will be assimilated in this case to a contract of partnership between the heirs, and subject to the same rules.

ART. 1222.—A donor or testator cannot order that the effects given or bequeathed by him to two or more persons in common, shall never be divided, and such a prohibition would be considered as if it were not made.

ART. 1223.—But a donor or testator can order that the effects given or bequeathed by him, be not divided for a certain time, or until the happening of a certain condition.

But if the time fixed exceed five years, or if the condition do not happen within that term, from the day of the donation or of the opening of the succession, the judge, at the expiration of this term of five years, may order the partition, if it is proved to him that the co-heirs cannot agree among themselves, or differ as to the administration of the common effects.

ART. 1224.—If the father or other ascendant orders by his will that no partition shall be made among his minor children or minor grandchildren inheriting from him, during the time of their minority, this prohibition must be observed, until one of the children or grandchildren comes of age, and demands the partition.

ART. 1225.—There is no occasion for partition, if the deceased has regulated it between his lawful heirs, or strangers ; and in such case, the judge must follow the will of the testator.

The same thing takes place where the testator has assigned distinct parts of the estate for the paternal legal portion of his children.

ART. 1226.—There can be no partition, when the use of the thing held in common is indispensable to the co-heirs, to enable them to enjoy, or to derive an advantage from the portion of the effects of the succession falling to them, such as an entry which serves as a passage to

several houses, or a way common to several estates, and other things of the same kind.

ART. 1227.—The action of partition cannot be prescribed against, as long as the thing remains in common, and such community is acknowledged or proved.

Thus, though co-heirs have enjoyed their hereditary effects in common for an hundred years and more, without making a division, any of them can, at any time, sue for a partition.

3 L. 459.

ART. 1228.—When one of the heirs has enjoyed the whole or part of the succession separately, or all the co-heirs have possessed each a portion of the hereditary effects, he or they who have thus separately possessed, can successfully oppose the suit for a partition of the effects of the succession, if their possession has continued thirty years without interruption.

2 A. 486, 749.

ART. 1229.—If there be but one of the heirs, who has separately enjoyed a portion of the effects of the succession during thirty years, and all the other heirs have possessed the residue of the effects of the succession in common, the action of partition among the latter will always subsist.

2 A. 749.

§ 2.—*Among what Persons Partition can be sued for.*

ART. 1230.—A partition may be sued for by any heirs, testamentary or *ab intestato*.

It can also be sued for by any universal legatee or legatees under an universal title, and even by a particular legatee, when a thing has been bequeathed to him in common with two or several persons.

3 L. 128; 17 L. 346; C. P. 1020.

ART. 1231.—The action of partition will not only be between co-heirs and co-legatees, but between all persons who hold property in common, from whatever cause they may hold in common.

3 L. 128; 7 L. 440; 17 L. 346.

ART. 1232.—It is not indispensable to be holder in common in order to be able to support the action of partition; possession alone, when it is lawful and proceeds from a just title, will support it.

Thus, usufructuaries of the same inheritance can institute among themselves the action of partition.

ART. 1233.—But the possession, necessary to support this action, must be in the names of the persons enjoying it, and for themselves; it cannot be instituted by those who possess in the name of another, as tenants and depositories.

ART. 1234.—Partitions cannot only be sued for by the majority of the heirs, but by each of them, so that one heir alone can force all the rest to a partition at his instance.

ART. 1235.—Tutors of minors, and curators of persons interdicted have the right to institute in their names suits for the partition of the effects of successions, whether movable or immovable, falling to minors

or persons interdicted, provided they are specially authorized by the judge on the advice of the family meeting.

10 L. 454; 11 L. 439; 2 A. 553.

ART. 1236.—Minors above the age of puberty, and those who are emancipated, can, with the same authorization and with the assistance of their curators, ad lites, sue for the partition of estates in which they are interested.

9 L. 567; 2 A. 553; See Art. 362.

ART. 1237.—But the authorization of the judge is not necessary to enable tutors or curators of minors or persons interdicted, or minors above the age of puberty, or emancipated, to answer to suits for partition brought against them.

ART. 1238.—With regard to the absent co-heirs, the curators who have been appointed to them, or the relations who have been put into possession of their effects, can sue or be sued for a partition, as representing in every respect the absent heirs.

2 A. 466.

ART. 1239.—Married women, even if they be separated in estate, cannot institute a suit for partition without the authorization of their husbands or of the judge.

But no authorization is necessary, if they are separated from bed and board, or divorced from their husbands.

ART. 1240.—The husband can, without the concurrence of his wife, cause the definitive partition of the movable effects of the succession falling to her, if, by the marriage contract, her present and future effects are settled on her as dowry.

But in such case he cannot, without the concurrence of his wife, compel the definitive partition of the immovable property of a succession falling to her, and which forms part of her dowry. Any partition thus made will be merely provisional.

But the co-heirs, of whom the partition is demanded, can render it definitive by making the wife a party to the suit for partition.

On the other hand, the co-heirs of the wife cannot compel her to a partition without making her and her husband a party to the suit.

2 R. 1.

ART. 1241.—Not only the co-heir himself, but the heirs of that co-heir, and any other successor can compel a partition of the estate, and be themselves compelled to make it.

ART. 1242.—The right given by the ancient laws to the heirs of a deceased person, to compel the assignee or purchaser of a portion of the succession sold by their co-heirs to retrocede it to them for the price paid for it, is repealed.

ART. 1243.—It is not necessary, to support the action of partition, that the co-heirs, or the party commencing it, should be in actual possession of the succession or of the thing to be divided; for among co-heirs and co-proprietors, it is not the possession but the property, which is the basis of the action.

ART. 1244.—It follows from the provisions of the preceding article that the partition can be demanded, even though one of the heirs should

have enjoyed some part of the estate separately, if there has been no act of partition, nor possession sufficient to acquire prescription.

§ 3.—*In what Manner the Judicial Partition is made.*

ART. 1245.—If all the heirs are of age and present or represented, the partition may be made in such form and by such an act as the parties interested agree upon.

3 L. 128; See 3 N. S. 409.

ART. 1246.—If, on the contrary, all the heirs are not present, if there be among them minors or persons interdicted, or if all the heirs of age and present do not agree to the partition or on the manner of making it, it shall be made judicially and in the form hereafter prescribed.

6 L. 472; 17 L. 346; C. P. 116, 964.

ART. 1247.—Every judicial partition shall be preceded by an inventory, in which the effects to be divided shall be appraised, according to the form prescribed for public inventories.

2 A. 553; 2 N. S. 1; 5 N. S. 551.

ART. 1248.—The public inventory, which may have been made by the parties interested at a time not exceeding one year previous to the suit for a partition, shall serve as the basis of the partition, unless one of the heirs demands a new appraisal, and proves that the effects mentioned in the inventory have not been estimated at their just price, or at the value they have acquired since the date of this act.

14 L. 272.

ART. 1249.—In this case the judge is bound to order a new appraisal of the effects to be divided, which shall be made by experts appointed by him to that effect, and duly sworn by the notary, who is appointed to make the procès verbal of the appraisal.

ART. 1250.—The action of partition and the contestations which may arise in the course of proceedings, are to be brought before the judge of the place where the succession is opened, though one of the parties interested may have his domicile out of the jurisdiction of the judge.

2 A. 329.

ART. 1251.—The judge, before whom the action of partition is brought, is bound to pronounce thereon in a summary manner, by which is always meant, with the least possible delay, and in preference to the ordinary suits pending before him.

ART. 1252.—The suit for partition ought to be instituted by the heir who wishes the division; the co-heirs or their representatives must be cited, in order that the partition may be ordered, and the form thereof determined, if there should be any dispute in this respect.

3 L. 128; 17 L. 348; 19 L. 36; 4 A. 56, 260; See 16 L. 157; C. P. 1024.

ART. 1253.—He who sues another for a partition of the effects of a succession, confesses thereby that the person against whom the suit is brought, is an heir.

ART. 1254.—If a partition is to be made among the children or descendants of the deceased, and one of the heirs alleges that his co-heir is bound to collate a piece of real property, which has been given him by

the deceased, and requires that his co-heir should decide on the manner in which he wishes to make this collation, the judge, if it be proved that the co-heir is bound to collate the property, shall order that the donee decide thereon, within a term to be fixed by the judge, which cannot exceed three days from the day on which the order has been notified to him, if he or his representative is found in the place.

ART. 1255.—If the donee, who is bound to collate a piece of real estate given him by the deceased, declare within the term fixed, as aforesaid, that he will return it in kind, the property, from that instant, becomes united to the other effects of the succession which is to be divided.

ART. 1256.—But if the donee declare that he will not return the real estate, which has been given him, but will take his share in the effects of the succession, after deducting the value of such real estate, or if he permits the term granted to him to make his decision, to expire, without deciding on the manner in which he will make his collation, he shall lose the right of returning this property in kind.

ART. 1257.—Whether the donee has decided that he will collate in kind or by deduction, the co-heirs, to whom the collation is due, have the right, as soon as the donee has decided thereon, to require and obtain an order that the property subject to the collation be appraised, as is prescribed in the following section, in order that it may be included among the effects to be divided for the sum at which it is appraised.

ART. 1258.—All points, arising before the judge having cognizance of the suit for partition on the manner of making the collation or other operations relating to the partition, being merely incidental to the suit, shall be decided on the simple motion of the party interested in having them decided, the same being duly notified to the other heirs or their attorneys, and a reasonable time being granted to answer thereto.

ART. 1259.—The judge who decides on a suit for a partition and on the mode of effecting it, has a right to regulate this mode as may appear to him most convenient and most advantageous for the general interest of the co-heirs, in conformity, nevertheless, with the following provisions.

11 L. 439; 5 A. 268.

ART. 1260.—Each of the co-heirs may demand in kind his share of the movables and immovables of the succession; but if there are creditors who have made any seizure or opposition, or if a majority of the co-heirs are of opinion that the sale is necessary in order to satisfy the debts and charges of the succession, the movables shall be sold at public auction, after the usual advertisements.

Stat. 28th March, 1832.—§ 1. Whenever two or more persons shall be co-proprietors of one continuous tract of land situated partly in different parishes, any one or more of said co-proprietors may institute an action for partition of the whole of said tract in any one of such parishes.

§ 2. In all judicial partitions where the property is divided in kind, the mortgages, liens and privileges existing against one of the co-proprietors shall, by the mere fact of the partition, attach to the share al-

lotted to him by the partition, and cease to attach to the shares allotted to his co-proprietors: *Provided, however*, that if any return of money be required to be made to any co-proprietor whose share is mortgaged or otherwise encumbered, by reason of the share allotted to him being of less value than the other shares, then such sums of money shall remain in the hands of the parties bound to contribute it respectively, shall be secured by mortgage on their respective shares, and be subject to the demand of those creditors of their co-proprietor who possessed mortgage or privileged claims against him, and according to the rank and priority of said creditors.

11 L. 439.

ART. 1261.—When the property is indivisible by its nature, or when it cannot be conveniently divided, the judge shall order, at the instance of any one of the heirs, on proof of either of these facts, that it be sold at public auction, after the time of notice and advertisements prescribed by law, and in the manner hereinafter prescribed.

11 L. 439; 1 R. 512; 3 R. 43; 2 A. 553.

ART. 1262.—It is said that a thing cannot be conveniently divided, when a diminution of its value, or loss or inconvenience of one of the owners, would be the consequence of dividing it.

ART. 1263.—When the effects of a succession are to be sold, in order to effect a partition, if all the heirs of the deceased are absent, minors or interdicted, the judge may, at the instance of the tutors and curators of these heirs, and on the advice of the meeting of the family of those of the heirs who are minors or interdicted, order the sale to be made on certain terms of credit and on proper security, unless the payment of the debts of the succession require that the sale be made for cash.

ART. 1264.—If there be, among the heirs of the deceased, any who are of age and present, and who demand that the sale be made for cash, it shall be made for cash, for a sufficient sum to cover the portion coming to them, and on a credit for the balance, on the terms prescribed by the other heirs.

But on the partition of the proceeds of the sale, the whole amount shall be reduced to its cash value, by deducting from the whole sum to be paid, ten per cent. *per annum*, and those heirs who require their portion in cash, shall receive it on the whole amount thus reduced.

Stat. 28th April, 1853.—No. 190. *An Act to amend Article one thousand two hundred and sixty-four of the Civil Code.*—Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That article one thousand two hundred and sixty-four of the Civil Code be, and the same is hereby amended, so as to read as follows, to wit: If there be among the heirs of the deceased, who are of age and present, and who demand that the sale be made for cash, it shall be made for cash, for a sufficient sum to cover the portion coming to them, and on a credit for the balance on the terms prescribed by the other heirs.

But, on the partition of the proceeds of the sale, the whole amount shall be reduced to its cash value, by deducting from the whole sum to

be paid eight per cent. per annum, and those heirs who require their portion in cash shall receive it on the whole amount thus reduced.

1 A. 212.

ART. 1265.—Any co-heir of age, at the sale of the hereditary effects, can become a purchaser to the amount of the portion owing to him from the succession, and he is not obliged to pay the surplus of the purchase money over the portion coming to him, until this portion has been definitively fixed by a partition.

See amendment to Art. 1139; 14 L. 111; 19 L. 557; 3 R. 439; 4 R. 37; 12 R. 666; 2 A. 412; 5 A. 208.

ART. 1266.—The minor co-heirs may also become purchasers of the hereditary effects, by the intervention of their tutors or curators, or by their assistance, if they have been specially authorized thereto by the judge, with the advice of the family meeting.

ART. 1267.—When the judge has ordered the partition, and regulated the manner in which it shall be made, as well as the collations, if the case require it, he shall refer the parties to a notary appointed by him to continue the judicial partition to be made between them.

1 R. 512.

ART. 1268.—If the heirs who have instituted the suit for partition be of age, and present, and the judge has fixed the mode of making it, whether in kind or otherwise, nothing shall prevent the heirs from continuing their partition amicably and in the manner they think proper.

§ 4.—*How the Notary is bound to proceed in the Judicial Partition.*

ART. 1269.—The notary appointed to make the partition is bound, within fifteen days at farthest from the notice of his appointment, to notify the heirs or their representatives, in writing, of the day, hour, and place in which he is to commence his work, sufficient time previous thereto, to enable them to attend, if they think proper.

4 L. 59; 16 L. 157.

ART. 1270.—As the business of partitions sometimes requires several days, the notary may divide his procès-verbal, and make as many vacations or sittings as he thinks proper. He can even defer the closing of it, if one of the parties requires it, in case any contestation arise on the manner of effecting it, and it becomes necessary to refer to the judge to have them terminated before proceeding further.

ART. 1271.—On the day appointed for the partition, the notary shall begin by settling the accounts which each of the heirs may owe to the succession.

5 A. 561.

ART. 1272.—The notary shall include in these accounts:

1. The sums which each of the co-heirs owes to the deceased;
2. Those which each of the co-heirs may have received or disbursed on account of the succession, whether for the payment of debts or for necessary and useful expenses on the effects of the succession;

3. Those which each of the co-heirs may owe by reason of damages or injury, which have been caused by his fault to the effects of the succession.

11 L. 262; 3 R. 43; 4 A. 8; 5 A. 561.

ART. 1273.—The accounts being thus settled, the notary must deduct from the effects of the succession the things which have been bequeathed by the deceased, either to any of the co-heirs beyond his portion when the collation is dispensed with, or to any other persons, as these things ought not to be included in the mass of the effects to be divided.

ART. 1274.—If the partition is to be made between children or legitimate descendants inheriting from their father, mother or other ascendant, and a collation is to be made, the notary shall cause the decree of the judge to be exhibited to him, by which it is decided whether the collation is to be made in kind or by taking less.

ART. 1275.—If the collation is to be made in kind, the notary is bound to include the property collated in the number of the effects of the succession, for its estimated value, which shall have been fixed by experts appointed by the judge, as is said above.

ART. 1276.—If, on the contrary, the collation is to be made by taking less, the notary shall add to the credit of the estate the sum due by the heir who is bound to make the collation, according to the appraisal which shall have been made by experts appointed by the judge, separately from the other articles of the succession, in order that the other heirs may have a sum of money, or some object equal to the estimated value of the property subject to collation.

ART. 1277.—The notary shall then proceed to the formation of the *active mass* of the succession.

ART. 1278.—This *active mass* shall be composed :

1. Of all the movables, slaves and real estate of the succession, which have not been sold, mention being made of their value, as stated in the inventory of the effects of the succession, or in the new appraisal which may have been made by experts appointed by the judge ;

2. Of the price of the movables, slaves and real estate, which have been sold to effect the partition ;

3. Of all the objects collated by the heirs, whether in kind or by taking less, in proportion to the appraised value given to them by the experts appointed by the judge ;

4. Of all the sums which the heirs may owe to the succession, according to the settled account ;

5. Of all the debts due to the succession by other persons.

ART. 1279.—The *active mass* of the succession being thus formed, if there be no collation, or if the collations are made in kind, the notary proceeds to the deductions to be made from the mass, in order to ascertain the balance to be divided.

ART. 1280.—By deduction is understood a portion or thing which an heir has a right to take from the mass of the succession, before any partition takes place.

ART. 1281.—The deductions which are to be made before the partition of the succession, consist :

1. Of the sums due to one or more of the heirs for a debt due them by the deceased, or advances made to the succession, or expenses on its effects, according to the amount settled among the heirs ;

2. Of the amount owing to the heirs to whom a collation is due, when the collation is made by taking less, in order that the heirs may receive a portion equal to the amount of the collation which is due ;

3. Of the privileged debts due or paid on account of the succession, which have been incurred since the death of the deceased, or in order to effect the partition.

ART. 1282.—When the collations have been made in kind, or when there is none to be made, the deductions are taken from the *active mass* of the succession, and the balance remaining forms the mass to be divided.

ART. 1283.—But when the collation is made fictitiously and by taking less, the notary having formed the active mass of the succession, including the collation, deducts the sum at which the property collated is estimated, and on the mass thus reduced the deduction is made.

ART. 1284.—When the deduction which is to be made in favor of the heir to whom the collation is due, has been ascertained and established, according to the preceding article, if there be among the effects of the succession any movables and immovables which this heir wishes to take at the estimated value, in payment of the amount of the collation due to him, he can take them at his choice, and the notary shall give them to him.

ART. 1285.—If there be two or more heirs who have a right to receive the collation due to them in the property and effects of the succession, and they cannot agree on the partition of the effects which they have thus chosen, the notary shall appoint experts to form allotments of these effects, for which the parties entitled to the collation shall draw lots, in the same manner as is hereafter prescribed for the formation and drawing of the lots of the definitive partition.

ART. 1286.—When the deductions have been made, and those to whom the collations were due have received them, as is said in the preceding article, the notary divides what remains into as many equal lots as there are heirs or roots entitled to a share.

ART. 1287.—In the formation and composition of the lots, care must be taken to avoid as much as possible the cantling of tenements, and

not to separate what is necessary for the same cultivation. And there ought to be included, if possible, in each lot, the same quantity of movables, immovables, rights and credits of the same nature and value.

5 A. 208.

ART. 1288.—When the lots are of unequal value, such inequality is compensated by means of a return of money, which the co-heir, having a lot of more value than the other, pays to his co-heirs.

ART. 1289.—The lots are formed by experts chosen for that purpose, and sworn by the notary charged with the partition, and are afterwards drawn for by the co-heirs.

4 A. 9.

ART. 1290.—If, in the course of a partition referred to a notary, contestations should arise, the notary shall make a *procès-verbal* of the objections and declarations of the parties, suspend his proceedings and refer the parties to the judge having cognizance of the partition, for his decision thereon.

11 L. 494; 12 R. 315; 4 A. 9; See 1 R. 415; 11 L. 439.

ART. 1291.—If there are several minors who have opposite interests in the partition, and who have the same tutor and curator, there shall be appointed to each of them a special tutor, whose functions shall cease as soon as the partition is terminated.

Emancipated minors must also be assisted by a special curator during the proceeding of the partition before the notary.

1 R. 512; 5 A. 208.

ART. 1292.—The rules established for the division of estates to be divided, are equally applicable to the sub-divisions to be made between the individual co-proprietors claiming under the same root.

2 A. 749.

ART. 1293.—No partition is made of the passive debts of the succession, each heir remains bound for the part he takes in the succession; but in order to equalize the shares, those heirs who take the largest allotments may be charged with the payment of a larger portion of the debts.

ART. 1294.—Partitions made agreeably to the above rules by tutors or curators of minors, or by curators of interdicted or absent persons, are definitive; but they are only provisional, if the rules have not been observed.

ART. 1295.—When the partition is only provisional, absentees, minors, persons interdicted, and married women may, if they find themselves injured thereby, demand that another be made, as provided by the section relative to the rescission of partitions.

A minor may institute this action even before he attains the age of majority, but a married woman cannot attack the provisional partition made by her husband until the dissolution of their community.

ART. 1296.—When the partition has been terminated by the notary, one of the parties must deposit an authentic copy thereof in the office of the judge who has ordered the partition, and make a motion that his co-heirs be summoned to show cause, if any they have, in ten days after notice of the order of the judge to that effect, why the partition should not be homologated.

6 N. S. 350; 16 L. 157; See 12 R. 315.

ART. 1297.—If the co-heirs, thus notified, have any objections to make against the manner in which the partition has been made, they are bound to file a written opposition to the homologation, within the time given them for that purpose, and they are bound to state in that opposition the errors, vices, and irregularities which they believe the partition contains to their prejudice.

1 R. 415; 6 N. S. 350; See 12 R. 315.

ART. 1298.—If the judge finds that this opposition is well founded in whole or in part, he shall order the partition to be rectified accordingly, and shall refer the parties to the notary who shall make a supplementary act of partition in conformity with the decision of the judge, of which an authentic copy shall be deposited in the office of the judge in the same manner as the original act is ordered to be deposited.

See 12 R. 315; C. P. 1031.

ART. 1299.—If, on the contrary, the judge finds that the opposition of the co-heirs is not well founded, he shall order the act of partition to be homologated, which shall be final between the parties, provided the formalities of the law have been fulfilled.

16 L. 157.

ART. 1300.—The form in which the notary is directed to make the act of partition, as is above described, is not a matter of such strict law that nullity results from the act, in case of this officer making any change in the form; provided all the provisions of the law relating to the formation of the accounts between the parties, the deductions the composition of the mass of the succession, the appointment and oaths of the experts, the making and drawing of the lots, have been observed in the partition, and the parties interested therein, or their representatives, have been duly notified to be present at the same.

ART. 1301.—After the partition, delivery must be made to each of the co-heirs of the title papers of the objects fallen to his share.

The title papers of a divided property remain in the possession of the heir who has the most considerable part of it, under the obligation of producing them, when required by the co-proprietors of the other part of the property.

Titles common to the whole inheritance shall be delivered to the person chosen by all the heirs to be the depositary of them, on condition of producing them as often as required. If they should not agree on that choice, such deposit shall be made by the order of the judge.

ART. 1302.—If, after the partition, a discovery should be made of some property not included in it, the partition must be amended or made over again, either in totality, or of the discovered property alone.

ART. 1303.—If, after the partition, an heir appears, whose death has been presumed on account of his long absence, or whose right was not known, as if a second testament unknown until then, should entitle him to inherit with the others, the first partition must be annulled, and another must be made of all the property remaining in kind, and of the value of whatever has been consumed or alienated, in order that he may have the share of the whole to which he is entitled.

ART. 1304.—All the rules established in the present section, with the exception of that which relates to the collations, are applicable to

partitions between co-proprietors of the same thing, when among the co-proprietors any are absent, minors, or interdicted, or when the co-proprietors of age and present cannot agree on the partition and on the manner of making it.

But in these kinds of partition, the action must be brought before the judge of the place where the property to be divided is situated, wherever the parties interested may be domiciliated.

2 A. 329; 8 L. 262; 19 L. 557; 5 N. S. 551; See C. P. 165; 3 N. S. 553.

SECTION II.—Of Collations.

§ 1.—What Collation is, and by whom it is due.

ART. 1305.—The collation of goods is the supposed or real return to the mass of the succession, which an heir makes of property which he received in advance of his share or otherwise, in order that such property may be divided together with the other effects of the succession.

4 N. S. 557; 8 L. 223.

ART. 1306.—Children or grandchildren, coming to the succession of their fathers, mothers, or other ascendants, must collate what they have received from them by donation *inter vivos*, directly or indirectly, and they cannot claim the legacies made to them by such ascendants, unless the donations and legacies have been made to them expressly as an advantage over their co-heirs, and besides their portion.

This rule takes place whether the children or their descendants succeed to their ascendants as legal or as testamentary heirs, and whether they have accepted the succession unconditionally, or with the benefit of inventory.

5 N. S. 223; 12 R. 589.

ART. 1307.—The obligation of collating is founded on the equality which must be naturally observed between children and other lawful descendants, who divide among them the succession of their father, mother, and other ascendants; and also on the presumption that what was given or bequeathed to children by their ascendants, was so disposed of in advance of what they might one day expect from their succession.

12 M. 421; 7 R. 429; 12 R. 539.

ART. 1308.—Collation must take place whether the donor has formally ordered it, or has remained silent on the subject; for collation is always presumed, where it has not been expressly forbidden.

ART. 1309.—But things given or bequeathed to children or other descendants by their ascendants, shall not be collated, if the donor has formally expressed his will, that what he thus gave, was an advantage or extra part, unless the value of the object given exceed the disposable portion, in which case the excess is subject to collation.

7 R. 429.

ART. 1310.—The declaration that the gift or legacy is made, as an advantage or extra portion, may be made, not only in the instrument where such disposition is contained, but even afterwards by an act passed before a notary and two witnesses.

ART. 1311.—The declaration that the gift or legacy is intended as an advantage or extra portion, may be made in other equivalent terms, provided they indicate, in an unequivocal manner, that such was the will of the donor.

ART. 1312.—If, upon calculation of the value of advantages thus given, and of the other effects remaining in the succession, such remaining part should prove insufficient to give to the other children their legitimate portion, the donee would then be obliged to collate the sum by him received, as far as necessary to complete such portion, though he would wish to keep the donation and renounce the inheritance; and in this calculation of the legitimate portion, the property given or bequeathed by the ascendants, not only to their children, but even to all other persons, whether relations or strangers, must be included.

See 7 R. 429.

ART. 1313.—The obligation of collating is confined to children or descendants succeeding to their fathers and mothers or other ascendants, whether *ab intestato* or by virtue of a testament.

Therefore this collation cannot be demanded by any other heir, nor even by the legatees or creditors of the succession to which the collation is due.

See 7 R. 429.

ART. 1314.—Such children or descendants only are obliged to collate, who have a right to a legitimate portion in the succession of their fathers, or mothers, or other ascendants.

Therefore natural children, inheriting from their mother or father, in the cases prescribed by law, are not liable to any collation between them, if they have not been expressly subjected to it by the donor, because the law gives them no right to a legitimate portion in their successions.

ART. 1315.—If children, or other lawful descendants holding property or legacies to be collated, should renounce the inheritance of the ascendant, from whom they have received such property, they may retain the gift, or claim the legacy to them made, without being subject to any collation.

If, however, the remaining amount of the inheritance should not be sufficient for the legitimate portion of the other children, including in the estate of the deceased the property which the person renouncing would have collated, had he become heir, he shall then be obliged to collate up to the sum necessary to complete such legitimate portion.

ART. 1316.—To make legitimate descendants liable to collation, as prescribed in the preceding articles, they must appear in the quality of heirs to the succession of the ascendant from whom they immediately have received the gift or legacy.

Therefore, grandchildren, to whom a gift was made or a legacy left by their grandfather or grandmother, after the death of their father or mother, are obliged to collate, when they are called to the inheritance of the grandfather or grandmother, jointly with the other grandchildren, or by representation with their uncles or aunts, brothers or sisters of their father or mother, because a legitimate portion is due to them in the estate of their grandfather or grandmother, on which it is presumed that

their grandfather or grandmother had intended to make the gift, or leave the legacy by anticipation.

4 N. S. 557; 12 L. 589.

ART. 1317.—But gifts made or legacies left to a grandchild by his grandfather or grandmother during the life of his father, are always reputed to be exempt from collation, because, while the father is alive, there is no legitimate portion due to the grandchild in the estate of his grandfather.

The father, inheriting from the grandfather, is not liable to collate the gifts or legacies left to his child.

12 L. 589.

ART. 1318.—In like manner, the grandchild, when inheriting in his own right from the grandfather or grandmother, is not obliged to refund the gifts made to his father, even though he should have accepted his succession; but if the grandchild comes in only by right of representation, he must collate what had been given to his father, even though he should have renounced his inheritance.

4 N. S. 557; 8 L. 228.

ART. 1319.—What has been said in the three preceding articles, of grandchildren inheriting from their grandfather or grandmother, must be understood of the great-grandchildren and other lawful descendants called to inherit from their ascendants, either in their own name or by right of representation.

§ 2.—*To whom the Collation is due, and what things are subject to it.*

ART. 1320.—The collation is only made to the succession of the donor.

Thus, in case of a father having alone settled a dowry on one of his children, the collation is only due to his succession. But, if the father and mother have jointly settled the dowry, the collation is to be made by halves to each of their successions, conformably to the rules established in the title of *the marriage contract*.

2 A. 630; 5 N. S. 228.

ART. 1321.—Collation is due for what has been expended by the father and mother to procure an establishment for their legitimate descendant coming to their succession, for the settlement of dowry, or for the payment of his debts.

ART. 1322.—Neither the expenses of board, support, education or apprenticeship are subject to collation, nor are marriage presents which do not exceed the disposable portion.

6 N. S. 143.

ART. 1323.—The same rule is established with respect to things given by a father, mother, or other ascendant, by their own hands to one of their children for his pleasure or other use.

ART. 1324.—The heir is not bound to collate the profits he has made from contracts made with his ascendant to whom he succeeds, unless the contracts, at the time of their being made, gave the heir some indirect advantage.

ART. 1325.—Also no collation is due for a partnership made without fraud with the deceased, if the conditions of the partnership are proved by an authentic act.

ART. 1326.—The advantage which a father bestows on his son, though in any other manner than by donation or legacy, is likewise subject to collation. Thus, when a father has sold a thing to his son at a very low price, or has paid for him the price of some purchase, or has spent money to improve his son's estate, all that is subject to collation.

ART. 1327.—The obligation of collation does not exclude the child or descendant, coming to the succession of his father, mother, or other ascendant, from claiming wages which may be due to him for having administered the property of the ascendant or for other services.

ART. 1328.—Real estate given by a father, mother, or other ascendant, to one of their children or descendants, and which has been destroyed by accident while in the possession of the donee, and without his fault, previous to the opening of the succession, is not subject to collation.

If, on the contrary, it is by the fault or negligence of the donee that the real estate has been destroyed, he is bound to collate to the amount of the value which the estate would have had at the time of the opening of the succession.

§ 3.—*How Collations are made.*

ART. 1329.—Collations are made in kind or by taking less.

ART. 1330.—The collation is made in kind when the thing which has been given, is delivered up by the donee to be united to the mass of the succession.

ART. 1331.—The collation is made by taking less, when the donee diminishes the portion he inherits, in proportion to the value of the object he has received, and takes so much less from the surplus of the effects of the succession, which is carried into effect as is explained in the section which treats of partitions.

ART. 1332.—In the execution of the collation it must first be considered whether the things subject to it are movables, real estate, or slaves.

6 L. 17.

ART. 1333.—If a real estate has been given, and the donee hath it in his possession at the time of the partition, he has the choice to make the collation in kind or by taking less, unless the donor has imposed on him the condition of making the collation in kind, in which case it cannot be made in any other manner than that prescribed by the donor, unless it be with the consent of the other heirs, who must be all of age, present, or represented in this State.

7 N. S. 20.

ART. 1334.—The donee who collates real estate, which has been given to him in kind, must be reimbursed by his co-heirs for the expenses which have improved the estate, in proportion to the increase of value which it has received thereby.

ART. 1335.—The co-heirs are bound to allow to the donee the ne-

ecessary expenses which he has incurred for the preservation of the estate though they may not have augmented its value.

ART. 1336.—As to works made on the estate for the mere pleasure of the donee, no reimbursement is due to him for them, he has however the right to take them away, if he can do it without injuring the estate and leave things in the same situation they were at the time of the donation.

ART. 1337.—Expenses made on real estates are distinguished into three kinds; necessary, useful, and those for mere pleasure.

Necessary expenses are those which are indispensable to the preservation of the thing;

Useful expenses are those which increase the value of the estate, but without which the estate can be preserved;

Expenses for mere pleasure are those which are only made for the accommodation or convenience of the proprietor or possessor of the estate, and which do not increase its value.

ART. 1338.—The donee who collates in kind the real estate given to him, is accountable for the deteriorations and damage which have diminished its value, when caused by his fault or negligence.

ART. 1339.—If within the time and in the form prescribed in the section which treats of partitions, the donee has made his election to collate in kind the real estate which has been given to him, and it is afterwards destroyed, without the act or fault of the donee, the loss is borne by the succession, and the donee shall not be bound to collate the value of the estate.

ART. 1340.—If the real estate be only destroyed in part, it shall be collated in the state in which it is.

ART. 1341.—But if the real estate is destroyed after the donee has declared that he wishes to collate by taking less, the loss is his, and he is bound to take less from the succession in the same manner as if the estate had not been destroyed.

ART. 1342.—When the collation is made in kind, the effects are united to the mass of inheritance free from all charges created by the donee, but creditors, holding mortgages, may intervene in the partition, and make opposition to the collation which may injure their rights.

12 R. 450.

ART. 1343.—In the case mentioned in the preceding article, if the property mortgaged, which has been collated in kind, falls by the partition to the donee, the mortgage continues to exist thereon as if it had never been collated; but if the donee receives for his portion other movables or immovables of the succession, the creditor shall have a privilege for the amount of his mortgage on the property which has thus fallen to his debtor by the partition.

12 R. 450.

ART. 1344.—When the gift of a real estate, made to a lawful child or descendant, exceeds the portion which the ascendant could legally dispose of, the donee may make the collation of this excess in kind, if such excess can be separated conveniently.

ART. 1345.—If, on the contrary, the retrenchment of the excess over and above the disposable portion cannot conveniently be made, the

donee is bound to collate the excess by taking less, as is hereafter prescribed for the cases in which the collation is made of real estate given him otherwise than as an advantage or *extra portion*.

ART. 1346.—The donee, who makes the collation in kind of the real estate given to him, may keep possession of the same, until the final reimbursement of the sums to him due for the necessary and useful expenses, which he has made thereon, after deducting the amount of the damage the estate has suffered through his fault or neglect, as is before provided.

ART. 1347.—When the donee has elected to collate the real estate given him by taking less on the part which comes to him from the succession, the collation must be made according to the value which the real estate had at the opening of the succession, a deduction being made for the expenses incurred thereon, in conformity with what has been heretofore prescribed.

ART. 1348.—If the donee has voluntarily alienated the real estate which has been given him as an advantage or extra portion, if he has permitted it to be seized and sold for the payment of his debts, or if it has been destroyed by his fault or negligence, he shall not be the less bound to make the collation of it, according to the value which the estate would have had at the time of the opening of the succession, deducting expenses, as is provided in the foregoing article.

ART. 1349.—But if the donee has been forced to alienate the real estate, he shall be obliged to collate by taking less, the price he has received from this sale and no more.

As, for example, if the donee shall be obliged to submit to a sale of the estate for some object of public utility, or to discharge a mortgage imposed by the donor, or because the estate was held in common with another person who has prayed for the sale in order to obtain a partition of it.

ART. 1350.—If the real estate, which has been given, has been sold by the donee, and afterwards is destroyed by accident in the possession of the purchaser, the donor shall only be obliged to collate, by taking less, the price he received for the sale.

ART. 1351.—When the collation is made by taking less, the co-heirs to whom the collation is due, have a right to require a sale of the property remaining to the succession, to be paid from the proceeds of this sale, not only the collation which is due to them, but the part which comes to them from the surplus of these proceeds, unless they prefer to pay themselves the amount of the collation due to them, by taking such movables and immovables of the succession as they may choose, according to the appraisement in the inventory, or the appraisement which serves as a basis to the partition.

ART. 1352.—If the co-heirs, to whom the collation is made by taking less, wish that the effects of the succession be sold, in order that they may be paid what is due them, they are bound to decide thereon, in three days from their being notified of the motion of the donee to that effect, before the judge of the partition, otherwise they shall be deprived of this right, and shall be considered as having consented to receive payment of the collation due them in effects and property of the succession, or otherwise, from the hands of the donee.

ART. 1353.—When the co-heirs, thus notified, require the sale of the effects of the succession to pay themselves the collation due them, the sale shall be made at public auction, in the same manner as when it is necessary to sell property held in common, in order to effect a partition.

ART. 1354.—If, on the contrary, the co-heirs to whom the collation is due, prefer to be paid the amount thereof in property and effects of the succession, or are divested of their right to require the sale of these effects, they shall be paid the amount of the collation in movables, immovables and other effects of the succession, in the same manner as is prescribed in the section which treats of *partitions*.

But in no case will these heirs be obliged to receive in payment credits of the succession.

ART. 1355.—If there are no effects in the succession, or not sufficient to satisfy the heirs to whom the collation is due, the amount of the collation, or the balance due on it, shall be paid them by the heir who owes the collation.

ART. 1356.—This heir shall have one year to pay the sum thus by him due, if he furnish his co-heirs with his obligation payable at that time, with ten per cent. interest, and give a special mortgage to secure the payment thereof, either on the real estate subject to the collation, if it is in his possession, or in want thereof, on some other immovable property which may suit the co-heirs.

See amendment to Art. 2895.

ART. 1357.—If the heir, who has been allowed to furnish his obligation as mentioned in the preceding article, fails to fulfil his engagement at the expiration of the year granted to him, the heirs, in whose favor this obligation has been made, or their representatives, have a right to cause the property mortgaged to them to be seized and sold, without any appraisalment, and at the price offered at the first exposure for sale.

ART. 1358.—If the property, thus seized and sold, is the same which was subject to the collation, the co-heirs seizing, or their representatives, shall be paid the amount of their debt due for the collation, by privilege and in preference to all the creditors of the donee, even to those to whom he may have mortgaged the property for his own debts or engagements, previous to the opening of the succession, saving to these mortgage creditors their recourse against other property of the donee.

ART. 1359.—If the donee, who owes the collation, has, before the opening of the succession, voluntarily sold the real estate given to him, and his other property is not sufficient to satisfy his co-heirs for the collation due them, the co-heirs, after a previous discussion of the effects of the donee, shall have the right of claiming the real estate thus sold, from those who may be the purchasers or detainers thereof, who shall be compelled to give it up as an object which had never belonged to the donee.

ART. 1360.—The third purchaser or possessor of the real estate subject to collation may avoid the effect of the action of the revendication, by paying to the co-heirs of the donee, to whom the collation is due, to wit: the excess of the value of the property above the disposable

portion, if the donation has been made as an advantage or extra portion, or the whole of the value thereof, if the donation has been made without this provision, by fulfilling in this respect all the obligations by which the donee himself was bound towards the co-heirs.

ART. 1361.—When slaves have been given, the donee is not permitted to collate them in kind; he is bound to collate for them by taking less, according to the value of the slaves at the time of the donation.

14 L. 352.

ART. 1362.—Therefore the donation of slaves contains an absolute transfer of the rights of the donor to the donee in the slaves thus given. They are at the risk of the donee, who is bound to support their loss or deterioration, at the same time that he profits by the children born of them; and if the donee dispose in good faith of all or any of the slaves, the action of revendication for recovering the slaves on the part of his co-heirs for the collation due to them, will not lie against those who are the purchasers or holders of the slaves.

11 L. 353.

ART. 1363.—The dispositions, contained in the two preceding articles, also take effect, when the donation, subject to the collation, consists in movable effects; the only difference is that the collation of movables given, must be according to their appraised value, if there be any annexed to the donation, and, in default thereof, recourse may be had to other evidence to establish the value of these movables at the time of the donation.

ART. 1364.—The collation of money may be made in specie, or by taking less, at the choice of the donee who is bound to decide thereon, in the same manner as is prescribed for the collation of real estate.

ART. 1365.—If it be slaves, movables or money, of which the donee wishes to make the collation by taking less, he has the right of compelling his co-heirs to pay themselves the collation due to them in money, and not otherwise, if there be sufficient in the succession to make these payments with.

ART. 1366.—But if there is not sufficient money in the succession to pay such heirs the collation due to them, they shall pay themselves by taking an equivalent in the other movables or immovables of the succession, as is directed with respect to the collation of real estate.

ART. 1367.—In case there be no property or effects in the succession to satisfy the collations due for slaves, movables or money given, the donee shall have, for the payment of the sum due to his co-heirs, the same terms of payment as are given for the payment of the amount of collations of real estate, and under the same conditions as are before prescribed.

SECTION III.—*Of the Payment of Debts.*

ART. 1368.—There are two principal things to be considered relative to the payment of the debts of a succession:

1. The actions of the creditors to cause themselves to be paid what is due them, and the persons against whom these actions can be brought;

2. The contribution which is to be made between these latter persons.

ART. 1369.—Contribution is the division which is made, among the heirs of the succession, of the debts with which the succession is charged, according to the proportion which each is bound to bear.

ART. 1370.—The creditors of a succession have three kinds of action to cause themselves to be paid the debts due them by the deceased, to wit:

1. A personal action against the heirs, or those who stand in the place of heirs;

2. An hypothecary action against the detainers or possessors of the property mortgaged for their debts;

3. And the action of the separation of the patrimony of the deceased from that of the heir.

1 A. 223; § 2; 1 A. 204; 2 A. 462.

ART. 1371.—The personal action, which the creditors of a succession can exercise against the heirs, has for its basis the obligation, which the heirs are under, to discharge the debts of the deceased.

This action is modified according as the deceased has left one or several heirs.

ART. 1372.—The heirs by the fact alone of the simple acceptance of a succession left them, contract the obligation to discharge all the debts of such succession, to whatever sum they may amount, though they far exceed the value of the effects composing it.

This rule has no exception, but when the heirs, before meddling with the succession have caused a true and faithful inventory thereof to be made, as is prescribed in the section of this title which relates to the *acceptance of successions* and the *benefit of inventory*; for in this case they are only bound for the debts to the amount of the value of the effects found in the succession.

ART. 1373.—Universal legatees, or legatees under an universal title, being in every respect assimilated to heirs, are subject to the payment of the debts of the succession, according to the same rules and under the same exceptions as heirs.

ART. 1374.—But though the heirs and other universal successors, who have not made an inventory as is before prescribed, are bound for the payment of all the debts of the succession to which they are called, even when the debts exceed the value of the property left them, they are not bound, *in solido* and one for the other, for the payment of the debts.

6 L. 17.

ART. 1375.—When the deceased has left one sole heir, or has bequeathed all his property universally to the same person, this heir or universal legatee is bound for the payment of the whole of the debts of the succession, and may be sued directly and personally as such by those who are the creditors of the succession.

ART. 1376.—If, on the contrary, the deceased has left two or more heirs, they are bound to contribute to the payment of those debts, only in proportion to the part which each has in the succession.

Thus the creditors of the succession must divide among the heirs the personal action which they have against them, and cannot sue one for the portion of the other, or one for the whole debt.

6 L. 17.

ART. 1377.—If the succession is divided by roots, the subdivision of debts takes place among the representatives of each root, in the same manner as when there are several heirs.

If then the deceased leaves for heirs two children and four grandchildren, the issue of another child deceased, each of the children is bound only for one-third of the debts, and each of the grandchildren for one twelfth.

ART. 1378.—If one of the heirs be a creditor of the deceased, confusion will only take place for his part in the debt, and he may claim from the co-heirs the part which each is bound to contribute for the payment of this debt.

ART. 1379.—The legatee under an universal title shall contribute with the heirs to the payment of the debts, in proportion to the part bequeathed to him in the succession; but the legatee under a particular title is not liable for the debts of the succession, though he may be obliged to contribute to them indirectly, as is hereafter explained.

5 A. 199.

ART. 1380.—If the testator has bequeathed more than his disposable effects amounted to, or if there does not remain sufficient property in the succession to pay all the debts, the legatees may be made to give up what they have received above what the testator was permitted to bequeath, or the deficit necessary to discharge the debts of the succession.

In the first case, each legatee suffers a retrenchment or proportional diminution of the amount of his legacy for its excess above the disposable portion; in the second he is compelled to bring back out of what he has received his proportional sum of what is necessary for the discharge of the debts.

But this action on the part of the creditors of the succession against the legatees, is prescribed by three years, to be calculated from the opening of the succession.

1 A. 214; 5 A. 199.

ART. 1381.—The particular agreements which the heirs may make among themselves, or with third persons, relative to the payment of the debts, do not affect their obligations towards the creditors of the succession.

Thus, though one of them be charged by the partition with the payment of the whole of a certain debt, each of them can be compelled by the creditor, by means of a personal action, to pay his proportion, saving to the latter his recourse against the person who is bound to guarantee him against it.

ART. 1382.—Although the heirs and other successors under an universal title are personally bound for the debts of the succession to any creditor, only in proportion to their respective shares in the succession, yet one heir may be bound to pay the whole of a debt by an hypothecary action, when the property fallen to his share has been mortgaged by the deceased; but he has recourse against his co-heirs, or the other succes-

sors standing in their place, for the amount which he has been bound to pay for the discharge of the mortgage debt.

2 L. 137; 1 A. 204.

ART. 1383.—The particular legatee who has satisfied the debt for which the bequeathed immovable was mortgaged, is and remains subrogated to the rights of the creditor against the heirs and legatees on an universal title.

ART. 1384.—The heir or successor under an universal title, who, by the effect of the action of mortgage exercised against him, has been obliged to pay more than his share of the common debt, has recourse against his co-heirs only for so much as each of them is bound to support personally, even though the co-heir or other successor, having paid the debt, should have caused himself to be subrogated to the rights of the mortgage creditor.

2 L. 137.

ART. 1385.—But if, at the time when this recourse is exercised, one of the heirs is insolvent, the portion which this heir was bound to contribute, shall be borne proportionally by the other solvent heirs and him who has paid the debt.

ART. 1386.—If all the immovables of a succession are incumbered with a legal or judicial mortgage, each heir who has in his possession one or more of these immovables, may be sued by the hypothecary action for the whole, at the choice of the creditor; but the heir so sued has his recourse against his co-heirs, as is before said.

2 L. 137.

ART. 1387.—The heir who is in possession of a mortgaged property which has fallen to him by the partition, may release himself from the hypothecary action instituted against him, by abandoning the property, so that it may be sold by the creditor who sues him, and the debt discharged out of the proceeds of the sale, but he has his recourse against his co-heirs for the payment of their proportions of the value.

1 A. 204.

ART. 1388.—But this abandonment of the property will not release the heir from his personal responsibility to the amount of the portion which he inherits, in case the mortgaged property will not sell for a sufficient sum to satisfy the debt for which it is given.

ART. 1389.—If a property which is bequeathed to any one has been mortgaged by the testator for his own debt, or that of a third person, the particular legatee is liable to the hypothecary action for the payment of this debt, at the instance of the creditor, saving to the legatee the right of abandoning the property mortgaged, in order to release himself from the hypothecary action, in the same manner as is permitted to the heir against whom this action is brought.

ART. 1390.—The particular legatee, who, in consequence of the hypothecary action, has paid the debt, or abandoned the property mortgaged, has no recourse against the heir of the testator, because by receiving the legacy, he is considered as having received it with the incumbrances with which it was charged.

ART. 1391.—On the contrary, if the heirs of the testator are obliged to pay this debt on the personal action which the mortgage creditor can institute against them, they have their recourse against the legatee, to

cause themselves to be reimbursed for having discharged and disengaged the object bequeathed, which they were not obliged to do.

ART. 1392.—But if the mortgage which the testator has given on the property bequeathed, be for a debt of a third person, the legatee who, at the suit of the mortgage creditor, pays the debts or abandons the property, has his recourse against the debtor for the debt for which the testator gave the mortgage.

ART. 1393.—The provisions contained in this section, relating to the manner in which heirs, or other universal successors are bound to contribute to the payment of debts, does not prevent the contribution from being otherwise regulated by the agreement of the parties, or the will of the testator, provided that by the dispositions made by the testator in this respect, the rights of the lawful heir are not prejudiced.

5 A. 199.

ART. 1394.—But these agreements or dispositions can only have effect between the heirs and other universal successors, they can in no manner alter their obligations towards the creditors of the succession for the payment of the debts, as is before said.

ART. 1395.—Titles which carry execution against the deceased, are also executory against the heir personally; nevertheless the creditors cannot obtain execution on them, until ten days after the notification of them be made to the person, or left at the domicile of the heir.

3 N. S. 182; 1 A. 204.

ART. 1396.—The heir, on being notified thereof, may oppose the execution, before the tribunal having cognizance of the matter, on his simple motion; and if he proves that he has claimed the delays for deliberating, the execution shall be suspended until the delays have expired.

1 A. 204.

ART. 1397.—The creditors of the succession may demand, in every case and against every creditor of the heir, a separation of the property of the succession from that of the heir. This is what is called the separation of patrimony.

1 A. 223.

ART. 1398.—The object of a separation of patrimony is to prevent property out of which a particular class of creditors have a right to be paid, from being confounded with other property, and by that means made liable to the debts of another class of creditors.

1 A. 223.

ART. 1399.—The effect of this demand, on the part of the creditors of a succession, is to cause them to be paid from the effects of the succession in preference to the creditors of the heir.

ART. 1400.—This separation may be demanded by all the creditors of the deceased, whatever they may be. It is not necessary that these debts be demandable in order to enable them to possess this right.

ART. 1401.—Even those, whose right is eventual, or depending on an uncertain condition, are admitted to make this demand, and as, before the condition happens, they cannot prevent the creditors of the heir from being paid, they are permitted to require security from them that they will refund, in case the condition happens.

ART. 1402.—The legatees may also demand the separation in order to secure the payment of their legacies after the payment of the debts of the succession.

2 A. 57.

ART. 1403.—The heir in part, who is a creditor of the succession, as confusion only takes place for the amount of his property, and as he remains a creditor for the balance, may also demand this separation from his co-heirs.

2 A. 57.

ART. 1404.—The benefit of this separation may be claimed against all the creditors of the heirs, whether privileged or not.

1 A. 223.

ART. 1405.—The creditors of a succession, in which there are several heirs, may demand this separation from some of the heirs, without being obliged to require it from the others.

ART. 1406.—The creditors, who demand this separation of the effects of the succession, cannot include in it the effects, which the deceased has given to one of his children by act *inter vivos*, and which the child is bound to collate; for these effects do not belong to the succession, and the collation, which the child who is the donee, is bound to make of them, is only established in favor of his co-heirs.

1 A. 223.

ART. 1407.—The right of demanding the separation cannot be exercised, if there has been a novation in the debt due by the deceased.

See § L. 321.

ART. 1408.—There is a novation in the debt of the deceased, when the creditor has accepted a new title from the heir, or a pledge or mortgage of the property of the latter, or if the creditor has granted him a term for payment, or a delay.

But there is no novation, if the creditor has merely commenced suit against the heir, or received from him the interest due the creditor.

ART. 1409.—The suit of separation of patrimony must be instituted within three months from the express or tacit acceptance of the heirs; after the expiration of this term, it is not admitted.

ART. 1410.—The petition for separation of patrimony shall not be received, unless it be accompanied with the sworn declaration of the creditor or creditors parties to it, that they believe the heir is embarrassed with debts, and that they have reason to believe that his personal debts will absorb the effects of the succession to their prejudice.

ART. 1411.—In the interval between the opening of the succession and the three months allowed for the institution of the suit for the separation of patrimony, the heir cannot alienate, affect, nor sell the effects of the succession, nor any of them to the prejudice of the creditors; and if he does it, the creditors may cause the acts to be declared null, as done in fraud of their rights.

ART. 1412.—The creditors of the heir, have also the right of demanding of the creditors of the succession, the separation of the effects of the heir from those of the succession, and the suit must be conducted

in the same manner, and instituted within the same period, as that at the instance of the creditors of the succession, and produces the same effects in favor of the creditors of the heir.

ART. 1413.—When the creditors of the succession have sued for a separation of patrimony, if there are not effects therein sufficient to pay them, they have their recourse against the property of the heir, after his own creditors have been paid.

ART. 1414.—The creditors of the heir, who have sued for the separation, enjoy the same right to cause themselves to be paid, from the balance of the effects of the succession, what is due them by the heir, in case the other property of the heir be not sufficient to pay them.

ART. 1415.—When there is competition between the creditors of the deceased only, and they have no privilege nor mortgage, they have an equal right against the effects of the succession, and the property of the heir; and each receives in proportion to his debt, if there is not property enough to pay them all.

ART. 1416.—If, in the case of the preceding article, there are some creditors by mortgage, they shall be paid out of the effects of the succession, according to the order of their mortgages; and out of the property of the heir in competition with the other creditors who have no mortgage.

ART. 1417.—But creditors by mortgage, or other creditors of the deceased, who have acquired the first mortgage upon the property of the heir, either by a new title, or by a judgment obtained against him, shall have a preference over the other creditors on the estate of the heir.

ART. 1418.—The heir, or other universal successor is not bound for the legacies, except to the amount of the value of the effects of the succession, and he can therefore free himself from them by abandoning to the legatees what remains of the succession, after the payment of the debts.

ART. 1419.—If it be the lawful heir, who makes the abandonment to the legatees, he has a right to reserve to himself, from the effects of the succession, the legitimate portion secured to him by law, and shall deliver up the balance to the legatees.

SECTION IV.—*Of the Effect of Partition.*

§ 1.—*Of the Warranty of Partition.*

ART. 1420.—Partition is a sort of exchange, which the co-heirs make among themselves, one giving up his right in the thing, which he abandons, for the right of the other in the thing he takes.

10 L. 172.

ART. 1421.—The co-heirs remain respectively bound to warrant, one to the other, the property falling to each of their shares against the disturbance and eviction which they may suffer, when the disturbance or eviction proceeds from a cause anterior to the partition.

ART. 1422.—The warranty does not take place, if the kind of eviction suffered has been excepted by a particular and express clause of the act; but it cannot be stipulated in a partition, by a general clause, that

there shall be no warranty among the co-heirs for any kind of disturbance whatever.

ART. 1423.—The warranty ceases, if it be by the fault of the co-heir, that he has suffered the eviction.

ART. 1424.—Each of the co-heirs is personally bound, in proportion to his hereditary share, to indemnify his co-heir for the loss which the eviction has caused him.

ART. 1425.—But the indemnity is only for the sum for which the object has been given by the partition to the heir who has suffered the eviction, and for the proportion which each of the heirs is bound to contribute, the amount of his own portion being extinguished by confusion; and the heir in this case has no right to claim remuneration from his co-heirs for any damages which he may have suffered by the eviction.

ART. 1426.—If one of the co-heirs happens to be insolvent, the portion, for which he is bound, must be divided equally, between the one who is guaranteed, and the other co-heirs who are solvent.

ART. 1427.—Warranty between co-heirs has two different effects, according to the two kinds of property which may exist in the succession;

One composed of things which corporeally exist, whether they be real or personal, with regard to which, warranty goes no further than assuring them to belong to the succession.

The other kind consists of active debts and other rights; and with respect to these, they are not only guaranteed as belonging to the succession, but also as being such as they appear to be, that is to say, as being really due to the succession, and due by debtors solvent at the time of the partition, and who shall be so when the debt becomes payable, if it be not then due.

ART. 1428.—The warranties mentioned in the preceding article exist of right, so that they are always implied, and the heirs are bound to them, though no mention be made thereof in the partition.

ART. 1429.—The warranty of the solvency of the debtor of a rent-charge, cannot be claimed after the lapse of five years from the partition.

ART. 1430.—Where, after the partition, the thing decays by its nature, or perishes by accident, such loss gives rise to no action of warranty.

ART. 1431.—If, since the partition, debts or charges before unknown are discovered, such new charges, whatever they may be, shall be supported by all the heirs, and they shall mutually guarantee each other.

ART. 1432.—The tacit mortgage which resulted from the partition for the execution of all the obligations contained therein, no longer exists; but the heirs may stipulate a special mortgage.

ART. 1433.—The action of warranty among co-heirs is prescribed, as ordinary actions are; and the time commences to run, to wit: for the property included in the partition, from the day of the eviction; and for debts, from the day that the insolvency of the debtor is established by the discussion of his effects.

11 L. 426.

ART. 1434.—The heir, to whose share an immovable or some other thing liable to be mortgaged, has fallen, is not bound by the mortgages which his co-heirs may have given on their individual shares of the

same, previous to the partition; and these mortgages are dissolved of right, except upon the property which falls to the heirs who have given the mortgages, if the property is susceptible of being mortgaged

See Arts. 1342, 1343; 12 R. 450.

§ 2.—*Of the Rescission of Partition.*

ART. 1435.—Partitions made, even with persons of full age, may be rescinded, like other covenants, for radical vices, such as violence, fraud or error.

ART. 1436.—They may even be rescinded, on account of lesion; and as equality is the base of partitions, it suffices, to cause the rescission, that such lesion be of more than one-fourth part of the true value of the property.

ART. 1437.—When partitions, in which minors, persons interdicted, or absentees are interested, have been made with all the formalities prescribed by law for judicial partitions, they cannot be rescinded for any other than those which would authorize the rescission of partitions made by persons of age and present.

ART. 1438.—But if these formalities have not been fulfilled, as the partition is only considered as provisional, it is not necessary to sue for the rescission of it, but a new partition may be demanded for the least lesion, which the minor, person interdicted or absentee, may have suffered.

5 L. 382; 7 L. 156.

ART. 1439.—The mere omission of a thing, belonging to the succession, is not ground for rescission, but simply for a supplement of partition.

ART. 1440.—The action of rescission mentioned in the foregoing articles, takes place in the cases prescribed by law, not only against all acts bearing the title of partition, but even against all those which tend to the division of property between co-heirs, whether such acts be called sales, exchanges, compromises, or by any other name.

6 L. 346.

ART. 1441.—But, after the partition, or the act operating the same effect, the action of rescission can no longer be admitted against a compromise made to put an end to disputes arising in consequence of the first act, although there should be no suit commenced on the subject.

ART. 1442.—The action of rescission is not admitted against a sale of hereditary rights, made without fraud to one of the heirs and at his risk by the other co-heirs or any of them.

ART. 1443.—The sale of hereditary rights of one heir to his co-heir is not subject to rescission, if the purchaser has run no risk, as, for example, if the vendor remains bound for the payment of the debts.

ART. 1444.—In order that the purchaser be not liable to this action, it is besides necessary that the vendor should have ceded to him all his hereditary rights, that is, all the rights he had in the succession. If he has only sold his part in the immovables to be divided, this sale shall be subject to rescission for lesion beyond a fourth.

ART. 1445.—This sale shall be subject to rescission if it be proved that, at the time it was made, the purchaser alone knew the value of the succession, and permitted the vendor to remain in ignorance of it.

ART. 1446.—The defendant in the suit for rescission may stop its course and prevent a new partition, by offering and giving to the plaintiff the supplement of his hereditary portion, either in money or in kind, provided the rescission is not demanded for cause of violence or fraud.

ART. 1447.—When the defendant is admitted to prevent a new partition, as is said in the preceding article, if he furnishes the supplement in money, it must be with interest from the day of the institution of the suit, if he furnishes it in effects, he is bound to restore the fruits from the same day.

ART. 1448.—The co-heir, who has alienated his share or part of it, is no longer admitted to bring the action of rescission for fraud or violence, if the alienation he has made was posterior to the discovery of the fraud, or to the cessation of the violence.

ART. 1449.—If the partition has been regulated by the father among his children, no restitution can take place, even in favor of minors, when, by such partition, one or more of the heirs have received more than the others, unless that overplus should exceed the portion which the father had a right to dispose of.

ART. 1450.—The minor who obtains relief against a partition, relieves those of full age; for the partition cannot subsist for one, and be annulled for another.

ART. 1451.—Suits for the rescission of partitions are prescribed by the lapse of ten years from the date thereof, and in case of error and fraud, from the day in which they are discovered.

3 R. 313; See Art. 3507.

ART. 1452.—This prescription, in case of lesion, runs against minors as well as against persons of age, when the partition has been made judicially and with all the forms prescribed by law.

TITLE II.

OF DONATIONS INTER VIVOS (BETWEEN LIVING PERSONS) AND MORTIS CAUSA (IN PROSPECT OF DEATH).

CHAPTER I.

GENERAL DISPOSITIONS.

ART. 1453.—Property can neither be acquired nor disposed of gratuitously, unless by donations *inter vivos* or *mortis causa*, made in the forms hereafter established for one or the other of these acts.

17 L. 144; 3 R. 78; 2 A. 30.

ART. 1454.—A donation *inter vivos* (between living persons) is an act by which the donee divests himself at present and irrevocably of the thing given, in favor of the donee who accepts it.

10 L. 85; 15 L. 562.

ART. 1455.—A donation *mortis causa* (in prospect of death) is an act to take effect, when the donor shall no longer exist, by which he disposes of the whole or a part of his property, and which is revocable.

3 R. 78; 15 L. 562; 17 L. 144; 19 L. 528; 2 A. 30; See 4 L. 423.

CHAPTER II.

OF THE CAPACITY NECESSARY FOR DISPOSING AND RECEIVING BY DONATION INTER VIVOS AND MORTIS CAUSA.

ART. 1456.—All persons may dispose of or receive by donation *inter vivos* or *mortis causa*, except such as the law expressly declares incapable.

14 L. 542; See 2 A. 667.

ART. 1457.—The incapacities are absolute or relative:

Absolute incapacities prevent the giving or receiving indefinitely with regard to all persons;

Relative incapacities prevent the giving to certain persons, or receiving from them.

3 A. 494.

ART. 1458.—It is sufficient if the capacity of giving exists at the moment the donation is made.

3 A. 494.

ART. 1459.—With regard to the capacity of receiving, it is sufficient, if it exists at the moment of the acceptance of the donation *inter vivos* or at the opening of the succession of the testator.

19 L. 528; 3 A. 494.

ART. 1460.—When the donation depends on the fulfilment of a condition, it is sufficient if the donee is capable of receiving at the moment the condition is accomplished.

17 L. 46; 19 L. 528.

ART. 1461.—To make a donation either *inter vivos* or *mortis causa*, one must be of sound mind.

ART. 1462.—Slaves cannot dispose of, or receive by donation *inter vivos* or *mortis causa*, unless they have been previously and expressly enfranchised conformably to law, or unless they are expressly enfranchised by the act itself by which the donation is made to them.

ART. 1463.—The minor under sixteen years cannot dispose of any property, save, however, the dispositions contained in the ninth chapter of this title.

ART. 1464.—The minor above sixteen can dispose only *mortis causa* (in prospect of death).

But he may dispose in this manner of the same amount as a person of full age can do, even to the prejudice of the usufruct granted by law to the father and mother of the minor not emancipated, during marriage; and the usufruct in that case, will cease to the advantage of the person in whose favor the minor had disposed of it if the minor dies, being still under the power of his father and mother; and to make such disposition the minor has no need of the authorization or concurrence of his curator.

2 R. 427.

ART. 1465.—Nevertheless, the minor who has a right to dispose by donation *mortis causa*, cannot make such disposition in favor of his curator *ad bona*, nor of his preceptors or instructors whilst he is under their authority.

ART. 1466.—The minor, even when he comes of age, cannot dispose of property either by donation *inter vivos* or *mortis causa* in favor of the person who has been his tutor or curator *ad bona*, unless the final account of the tutorship or curatorship has been previously rendered and settled.

The two cases above mentioned do not apply to the relations of the minor who have been his tutors, curators, or institutors.

ART. 1467.—A married woman cannot make a donation *inter vivos* without the concurrence or special consent of her husband, or unless she be authorized by the judge, conformably to what is prescribed under the title of *husband and wife*.

But she needs neither the consent of her husband nor any judicial authorization to dispose by donation *mortis causa*.

ART. 1468.—Those who have lived together in open concubinage are respectively incapable of making to each other, whether *inter vivos* or *mortis causa*, any donation of immovables; and if they make a donation of movables, it cannot exceed one-tenth part of the whole value of their estate.

Those who afterwards marry are excepted from this rule.

6 L. 350; 17 L. 144; 10 R. 143; 2 A. 517, 946; 3 A. 239; 6 A. 323, 350.

ART. 1469.—In order to be capable of receiving by donation *inter vivos*, it suffices to be conceived at the time of the donation.

In order to be capable of receiving by last will, it suffices to be conceived at the time of the decease.

But the donations or the last will can have effect only in case the child should be born alive.

17 L. 46; 3 A. 494.

ART. 1470.—Natural children or acknowledged bastards cannot receive from their natural parents, by donations *inter vivos* or *mortis causa* beyond what is strictly necessary to procure them sustenance, or an occupation or profession which may maintain them, whenever the father or the mother who has thus disposed in their favor, leaves legitimate children or descendants.

Those donations shall be reducible in case of excess, according to the rules laid down under the title of *father and child*.

1 L. 495; 14 L. 542; 6 A. 161.

ART. 1471.—When the natural mother has not left any legitimate children or descendants, natural children may acquire from her by donation *inter vivos* or *mortis causa*, to the whole amount of her succession.

4 A. 306.

ART. 1472.—But if she has left them only a part, and has disposed of the rest in favor of other persons, her natural children have no action against her heirs for any thing more than so much as is wanting to supply the maintenance that is secured to them by law, in case what she has left them be not sufficient for their support.

ART. 1473.—When the natural father has not left legitimate children or descendants, the natural child or children, acknowledged by him may receive from him, by donation *inter vivos* or *mortis causa*, to the amount of the following proportions, to wit :

One-fourth of his property, if he leaves legitimate ascendants or legitimate brothers or sisters or descendants from such brothers and sisters; and one-third, if he leaves more remote collateral relations.

8 L. 459; 14 L. 542; 10 R. 512; 12 R. 56, 552; 6 A. 156, 161; See 4 L. 267.

ART. 1474.—In all cases in which the father disposes in favor of his natural children, of the portion permitted him by law to dispose of, he is bound to dispose of the rest of his property in favor of his legitimate relations; every other disposition shall be null, except those which he may make in favor of some public institution.

8 L. 459; 10 R. 512; 12 R. 56, 552.

ART. 1475.—Natural fathers and mothers can, in no case, dispose of property in favor of their adulterine or incestuous children, unless to the mere amount of what is necessary to their sustenance, or to procure them an occupation or profession by which to support themselves.

ART. 1476.—Doctors of physic or surgeons, who have professionally attended a person during the sickness of which he dies, cannot receive any benefit from donations *inter vivos* or *mortis causa* made in their favor by the sick person during that sickness. To this, however, there are the following exceptions :

1. Remunerative dispositions made on a particular account, regard being had to the means of the disposer and to the services rendered;
2. Universal dispositions in case of consanguinity.

The same rules are observed with regard to the ministers of religious worship.

ART. 1477.—Donations *inter vivos* and *mortis causa* may be made in favor of a stranger, when the laws of his country do not prohibit similar dispositions from being made in favor of a citizen of this State.

17 L. 312.

ART. 1478.—Every disposition in favor of a person incapable of re-

ceiving shall be null, whether it be disguised under the form of an onerous contract, or be made under the name of persons interposed.

The father and mother, the children and descendants, and the husband or wife of the incapable person, shall be reputed persons interposed.

1 L. 495; 14 L. 542; 17 L. 46; 12 R. 56.

ART. 1479.—Proof is not admitted of the dispositions having been made through hatred, anger, suggestion, or captation.

9 L. 453.

CHAPTER III.

OF THE DISPOSABLE PORTION, AND OF ITS REDUCTION IN CASE OF EXCESS.

SECTION I.—Of the Disposable Portion and the Legitime.

ART. 1480.—Donations *inter vivos* or *mortis causa* cannot exceed two-thirds of the property of the disposer, if he leaves at his decease, a legitimate child; one-half, if he leaves two children; and one-third if he leaves three or a greater number.

Under the name of *children* are included descendants of whatever degree they be, it being understood that they are only counted for the child they represent.

1 L. 234; 4 L. 353; 14 L. 542; 12 R. 539; 2 A. 30, 293; See 1 A. 142.

ART. 1481.—Donations *inter vivos* or *mortis causa* cannot exceed two-thirds of the property, if the disposer, having no children, leave a father, mother or both.

7 N. S. 414; See 1 A. 142.

ART. 1482.—In the cases prescribed by the two last preceding articles, the heirs are called *forced heirs*, because the donor cannot deprive them of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them.

7 N. S. 414; See 1 A. 142.

ART. 1483.—Where there are no legitimate descendants, and in case of the previous decease of the father and mother, donations *inter vivos* or *mortis causa*, may be made to the whole amount of the property of the disposer, saving the reservation made hereafter.

4 L. 353; 14 L. 542; See 1 A. 142.

ART. 1484.—The donation *inter vivos* shall in no case divest the donor of all his property; he must reserve to himself enough for subsistence; if he does not do it, the donation is null for the whole.

11 R. 302; 6 A. 495; See 1 A. 142.

ART. 1485.—The legitimate portion of which the testator is forbidden to dispose to the prejudice of his descendants, being once fixed by the number of children living or represented at the death of the testator, does not diminish by the renunciation of one or any of them. The part of those who renounce goes to those who accept.

2 A. 30; See 1 A. 142.

ART. 1486.—If the disposition made by donation *inter vivos* or

mortis causa, be of an usufruct, or of an annuity, the value of which exceeds the disposable portion, the forced heirs have the option, either to execute the disposition, or to abandon to the donee the ownership of such portion of the estate as the donor had a right to dispose of.

ART. 1487.—The value in full ownership of property which has been alienated, either for an annuity for life, or with reservation of an usufruct, to one of those who succeed to the inheritance in the direct descending line, shall be imputed to the disposable portion, and the surplus, if any there be, shall be brought into the succession; but this imputation and this collation cannot be demanded by any of the heirs in the direct descending line who have consented to those alienations.

7 N. S. 414; See 1 A. 142.

ART. 1488.—The disposable *quantum* may be given in whole or in part, by an act *inter vivos* or *mortis causa*, to one or more of the disposer's children or successible descendants, to the prejudice of his other children or successible descendants, without its being liable to be brought into the succession by the donee or legatee, provided it be expressly declared by the donor that this act is intended to be over and above the legitimate portion.

This declaration may be made, either by the act containing the disposition, or subsequently by an instrument executed before a notary public, in presence of two witnesses.

See 5 M. 408; 1 A. 142.

SECTION II.—*Of the Reduction of Dispositions Inter Vivos or Mortis Causa; of the Manner in which it is made; and of its Effects.*

ART. 1489.—Any disposal of property, whether *inter vivos* or *mortis causa*, exceeding the *quantum* of which a person may legally dispose to the prejudice of the forced heirs, is not null, but only reducible to that *quantum*.

7 N. S. 414; 8 L. 459; 19 L. 528; 11 R. 302; 12 R. 552; See 1 A. 142.

ART. 1490.—A donation *inter vivos*, exceeding the disposable *quantum*, retains all its effect during the life of the donor.

ART. 1491.—On the death of the donor or testator, the reduction of the donation, whether *inter vivos* or *mortis causa*, can be sued for only by forced heirs, or by their heirs or assigns: neither the donees, legatees, nor creditors of the deceased, can require that reduction nor avail themselves of it.

8 L. 459; 14 L. 542; 19 L. 528; 3 R. 78; 11 R. 302; See 7 R. 429.

ART. 1492.—To determine the reduction to which the donations, either *inter vivos* or *mortis causa* are liable, an aggregate is formed of all the property belonging to the donor or testator at the time of his decease; to that is fictitiously added the property disposed of by donation *inter vivos*, according to its value at the time of the donor's decease, in the state in which it was at the period of the donation.

The sums due by the estate are deducted from this aggregate amount, and the disposable *quantum* is calculated on the balance, taking into consideration the number of heirs and their qualities of ascendant or descendant, so as to regulate their legitimate portion by the rules above established.

1 A. 142, 237.

ART. 1493.—In the fictitious collation of effects given by act *inter vivos* by the deceased, those which have perished by accident in the hands of the donee, are not included; those which have perished through his fault only are to be included.

ART. 1494.—Donations *inter vivos* can never be reduced, until the value of all the property comprised in donations *mortis causa*, be exhausted; and when that reduction is necessary, it shall be made by beginning with the last donations, and thus successively ascending from the last to the first.

ART. 1495.—When the last donee is insolvent, the heir can, after the previous discussion of his effects, claim from the donee, which precedes the last, his legitime, and so on to the one preceding him.

ART. 1496.—If the donation *inter vivos*, subject to reduction, was made to one of those who succeed to any part of the estate, the latter is authorized to retain of the property given the value of the portion that would belong to him as heir in the property not disposable, if it be of the same nature.

ART. 1497.—When the value of donations *inter vivos* exceeds or equals the disposable *quantum*, all dispositions *mortis causa* are without effect.

ART. 1498.—When the dispositions *mortis causa* exceed, either the disposable *quantum* or the portion of that *quantum* that remains after the deduction of the value of the donations *inter vivos*, the reduction shall be made *pro rata*, without any distinction between universal dispositions and particular ones.

11 L. 429.

ART. 1499.—Nevertheless, in case the testator has expressly declared that any particular legacy should be paid in preference to the others, that preference shall take place, and the legacy, that is, the object of it, shall not be reduced, if the value of the others does not fall short of the legal reservation.

ART. 1500.—Remunerative donations can never be reduced below the estimated value of the services rendered.

2 R. 292.

ART. 1501.—Donations, by which charges are imposed on the donee, can never be reduced below the expenses, which the donee has incurred to perform them.

ART. 1502.—The donee restores the proceeds of what exceeds the disposable portion, only from the day of the donor's decease, if the demand of the reduction was made within the year; otherwise from the day of the demand.

ART. 1503.—Immovable property, that is brought into the succession through the effect of reduction, is brought into it without any charge of debts or mortgages created by the donee.

ART. 1504.—The action of reduction or revendication may be brought by the heirs against third persons holding the immovable property, which has been alienated by the donee, in the same manner and order that it may be brought against the donee himself, but after discussion of the property of the donee.

1 L. 505; 11 R. 302.

ART. 1505.—If the donee has successively sold several objects of real estate, liable for an action of revendication, that action must be brought against third persons holding the property, according to the order of their purchases, beginning with the last, and ascending in succession from the last to the first.

CHAPTER IV.

OF DISPOSITIONS REPROBATED BY LAW IN DONATIONS INTER VIVOS AND MORTIS CAUSA.

ART. 1506.—In all dispositions *inter vivos* or *mortis causa*, impossible conditions, those which are contrary to the laws or to morals, are reputed not written.

12 R. 56.

ART. 1507.—Substitutions and *fidci commissa* are and remain prohibited.

Every disposition by which the donee, the heir or legatee, is charged to preserve for or to return a thing to a third person, is null, even with regard to the donee, the instituted heir or legatee.

In consequence of this article, the trebellianic portion of the civil law, that is to say, the portion of the property of the testator, which the instituted heir had a right to retain, when he was charged with a *fidci commissa* or fiduciary bequest, is no longer a part of our law.

4 L. 502, 212; 6 L. 231; 12 L. 19; 13 L. 1; 13 L. 21; 4 N. S. 45; 1 R. 115; 2 A. 377; 3 A. 432, 494;
5 A. 476.

ART. 1508.—The disposition by which a third person is called to take the gift, the inheritance, or the legacy, in case the donee, the heir or the legatee does not take it, shall not be considered a substitution and shall be valid.

3 A. 494.

ART. 1509.—The same shall be observed as to the disposition *inter vivos* or *mortis causa*, by which the usufruct is given to one, and the naked property to another.

7 N. S. 414; 1 R. 115; 3 A. 494.

CHAPTER V.

OF THE DONATIONS INTER VIVOS (BETWEEN LIVING PERSONS.)

SECTION I.—General Dispositions.

ART. 1510.—There are three kinds of donations *inter vivos*:

The donation purely gratuitous, or that which is made without condition and merely from liberality;

The onerous donation, or that which is burdened with charges imposed on the donee;

The remunerative donation, or that the object of which is to recompense for services rendered.

ART. 1511.—The onerous donation is not a real donation, if the

value of the object given does not manifestly exceed that of the charges imposed on the donee.

ART. 1512.—The remunerative donation is not a real donation, if the value of the services to be recompensed thereby being appreciated in money, should be little inferior to that of the gift.

2 R. 292; See 6 L. 330.

ART. 1513.—In consequence, the rules peculiar to donations *inter vivos* do not apply to onerous and remunerative donations, except when the value of the object given exceeds by one-half that of the charges or of the services.

6 L. 330; 11 R. 302; 3 A. 230.

ART. 1514.—A donation *inter vivos* can comprehend only the present property of the donor. If it comprehends property to come, it shall be null with regard to that.

10 L. 85; 2 A. 776.

ART. 1515.—The donor may impose on the donee any charges or conditions he pleases, provided they contain nothing contrary to law or good morals.

ART. 1516.—Every donation *inter vivos* made on conditions, the execution of which depends on the sole will of the donor, is null.

ART. 1517.—It is also null if it was made on condition of paying other debts and charges than those that existed at the time of the donation, or were expressed either in the act of donation, or in the act that was to be annexed to it.

ART. 1518.—In case the donor has reserved to himself the liberty of disposing of any object comprised in the donation or of a stated sum on the property given, if he dies without having disposed of it, that object or sum shall belong to the heirs of the donor, any clause or stipulation to the contrary notwithstanding.

ART. 1519.—The four preceding articles are not applicable to donations of which mention is made in the eighth and ninth chapters of the present title.

15 L. 562.

ART. 1520.—The donor is permitted to dispose, for the advantage of any other person, of the enjoyment or usufruct of the immovable property given, but cannot reserve it for himself.

11 R. 302; 4 A. 36.

ART. 1521.—The donor may stipulate the right of return of the objects given, either in case of his surviving the donee alone, or in case of his surviving the donee and his descendants.

That right can be stipulated for the advantage of the donor alone.

6 L. 231; 12 L. 207.

ART. 1522.—The effect of the right of return is, that it cancels all alienations of the property given, that may have been made by the donee or his descendants, and causes the property to return to the donor free and clear of all incumbrances and mortgages, except, however, the mortgage for the dowry and matrimonial agreements, if the other property of the husband, being the donee, be not sufficient, and only in case the donation was made to him by the same marriage contract, which gave rise to such rights and mortgages.

SECTION II.—*Of the form of Donations inter vivos.*

ART. 1523.—An act shall be passed before a notary public and two witnesses of every donation *inter vivos* of immovable property, of slaves or incorporeal things, such as rents, credits, rights or actions, under the penalty of nullity.

S N. S. 126; 2 L. 209; 16 L. 271; 3 R. 73; 12 R. 76; 1 A. 237; 2 A. 724.

ART. 1524.—No feigned delivery of immovables or slaves given shall have effect against third persons.

ART. 1525.—A donation *inter vivos*, even of movable effects, will not be valid, unless an act be passed of the same, as is before prescribed.

Such an act ought to contain a detailed estimate of the effects given.

4 N. S. 464; 17 L. 365; 3 R. 73; 6 A. 766.

ART. 1526.—The manual gift, that is, the giving of corporeal movable effects accompanied by a real delivery, is not subject to any formality.

See 12 R. 76.

ART. 1527.—A donation *inter vivos* shall be binding on the donor, and shall produce effect only from the day of its being accepted in precise terms.

The acceptance may be made during the lifetime of the donor by a posterior and authentic act, but in that case the donation shall have effect, with regard to the donor, only from the day of his being notified of the act establishing that acceptance.

6 L. 231, 245; 13 L. 404.

ART. 1528.—Yet if the donation has been executed, that is, if the donee has been put by the donor into corporal possession of the effects given, the donation, though not accepted in express terms, has full effect.

2 L. 33.

ART. 1529.—If the donee be of full age, the acceptance may be made by him, or in his name by his attorney in fact having special power to accept the donation which is made, or a general power to accept the donations that have been or may be made.

See 6 L. 231; 2 L. 335.

ART. 1530.—The acceptance can only be made by the donee personally, or by his attorney in fact during his life. If he refuse or neglect to accept, his creditors cannot accept it in his stead, under the pretext that the refusal has been in fraud of their rights.

ART. 1531.—If the donee die before having accepted, the acceptance cannot be made by his heirs, and the donation remains without effect.

ART. 1532.—A married woman cannot accept a donation without the consent of her husband, and in case of the husband's refusal, without being authorized by the judge, conformably to what is prescribed in the title *of husband and wife*.

ART. 1533.—A donation made to a minor under the age of puberty, must be accepted by his tutor.

A minor arrived at the age of puberty, but not emancipated, must accept it under the authorization, or with the concurrence of his curator.

Nevertheless the parents of a minor, whether he be arrived at the age of puberty or not, whether he be or be not emancipated, and the other legitimate descendants, even in the lifetime of the parents, though they be neither tutors nor curators to the minor, may accept for him.

6 L. 231, 245.

ART. 1534.—If a donee, being of full age, be under interdiction, the acceptance is made for him by his curator.

ART. 1535.—A person deaf and dumb, knowing how to write, may accept for himself, or by an attorney in fact.

If he cannot write, the acceptance shall be made by a curator appointed by the judge for that purpose.

ART. 1536.—Donations made for the benefit of an hospital, of the poor of a community, or of establishments of public utility, shall be accepted by the administrators of such communities or establishments.

17 L. 46, 312; 2 R. 438.

ART. 1537.—A donation duly accepted is perfect by the mere consent of the parties; and the property of the objects given is transferred to the donee, without the necessity of any other delivery.

ART. 1538.—The property given passes to the donee with all its charges, even those which the donor has imposed between the time of the donation and that of the acceptance.

ART. 1539.—The universal donee is bound to pay the debts of the donor which existed at the time of the donation, but he can discharge himself therefrom by abandoning the property given.

ART. 1540.—If the whole of the effects of the donor have been given to several donees, each for a certain proportion, each of them is bound for the debts for the portion of which he is the donee.

ART. 1541.—When the donation comprehends property that may legally be mortgaged, the act of donation, as well as the act of acceptance, whether the acceptance be made by the same or a separate act, must be registered within the time prescribed for the registry of mortgages, in a separate book kept for that purpose by the register of mortgages, which book shall be open to the inspection of all parties requiring it.

ART. 1542.—This registry shall be made at the instance of the husband, when the property has been given to his wife; and if the husband does not comply with this formality, the wife may cause it to be complied with, without requiring authorization for that purpose.

ART. 1543.—When the donation is made to minors, to persons under interdiction, or to public establishments, the registry shall be made at the instance of the tutors, curators or administrators.

ART. 1544.—The want of registry may be pleaded by all persons concerned except the donor, those persons whose duty it was to cause the registry to be made, and their representatives.

ART. 1545.—Minors, persons under interdiction, or married women, are not entitled to relief for the want of acceptance or registry of donations; but they have in such case their resource against their tutors, curators or husbands; and even in case of the insolvency of such tutors, curators or husbands, they shall not be entitled to relief by way of restitution.

SECTION III.—*Of the Exception to the Rule of the Irrevocability of Donations Inter Vivos.*

ART. 1546.—Donations *inter vivos* are liable to be revoked or dissolved on account of the following causes :

1. The ingratitude of the donee ;
2. The non-fulfilment of the eventual conditions which suspend their consummation ;
3. The non-performance of the conditions imposed on the donee ;
4. The donor's having children after the donation ;
5. The legal or conventional return.

17 L. 365.

ART. 1547.—Revocation on account of ingratitude can take place only in the three following cases :

1. If the donee has attempted to take the life of the donor ;
2. If he has been guilty towards him of cruel treatment, crimes or grievous injuries ;
3. If he has refused him food when in distress.

17 L. 365 ; 11 R. 302.

ART. 1548.—An action of revocation for cause of ingratitude must be brought within one year from the day of the act of ingratitude, imputed by the donor to the donee, or from the day that the act was made known to the donor.

This revocation cannot be sued for by the donor against the heirs of the donee, nor by the heirs of the donor against the donee ; unless in the latter case the suit was brought by the donor, or he died within the year in which the act of ingratitude was committed.

17 L. 365.

ART. 1549.—Revocation for cause of ingratitude affects neither the alienation made by the donee nor the mortgages, nor the real incumbrances he may have laid on the thing given, provided such transactions were anterior to the bringing of the suit of revocation.

ART. 1550.—In case of revocation for cause of ingratitude, the donee shall be obliged to restore the value of the thing given, estimating such value according to its worth at the time of bringing the action, and the proceeds from the day that it is brought.

ART. 1551.—Donations in consideration of marriage are not revocable for cause of ingratitude, when there are children of that marriage.

When there are not, the revocation takes place with regard to the donee, but without impairing the rights resulting from the marriage in favor of the other party to the marriage.

ART. 1552.—When an eventual condition, which suspends the execution of a donation, can no longer be accomplished, as if the donation was to be executed on the arrival of a certain vessel, and the vessel is lost, the donation is dissolved of right.

ART. 1553.—But if the condition be potestative, that is, if the donee is obliged to perform or prevent them, their non-fulfilment does not, of right, operate a dissolution of the donation ; it must be sued for and decreed judicially.

ART. 1554.—An action of revocation or rescission of a donation on account of the non-execution of the conditions imposed on the donee, is

subject only to the usual prescription, which runs only from the day that the donee ceased to fulfil his obligations.

ART. 1555.—In case of revocation or rescission on account of the non-execution of the conditions, the property shall return to the donor free from all encumbrances or mortgages created by the donee; and the donor shall have, against any other persons possessing the immovable property given, all the rights that he would have against the donee himself.

ART. 1556.—All donations *inter vivos*, made by persons having neither children nor descendants actually living at the time of the donation, of whatever value those donations may be, and on whatever account they may have been made, should they even be mutual, not excepting such as were made in favor of marriage by any but the ascendants of the married persons, or by the one of them to the other, shall be considered as revoked up to the disposable portion by the birth of children to the donor, even of a posthumous child, or by the legitimation of a natural child by a subsequent marriage, if the child be born since the donation.

17 L. 365; 3 R. 441; See 8 M. 707; 1 N. S. 465.

ART. 1557.—That revocation takes place even though the child of the donor were conceived at the time of the donation.

ART. 1558.—The property comprised in a donation revoked shall return to the estate of the donor, free from all charges and mortgages, imposed upon it by the donee. It is not liable to the restitution of the dowry of his wife, or to any other matrimonial obligations whatever, even in default of other property; and this shall take place even though the donation be made in favor of the marriage of the donee, and inserted in the contract, and though the donor bound himself as security by the donation to the execution of the contract.

ART. 1559.—Donations, thus revoked, cannot be revived nor become again effectual, either by the death of the donor's child or by any confirmative act; and if the donor desires to give the same property to the same donee, either before or after the death of the child, by whose birth the donation has been revoked, he can do it only by a new disposition.

ART. 1560.—Every clause or agreement, by which the donor may have renounced the revocation of the donation on account of the birth of a child, shall be held null and of no effect.

ART. 1561.—The donee, his heirs or assigns cannot plead prescription in support of the donation revoked by the birth of a child, until after a possession of thirty years, to commence only after the day of the birth of the last of the donor's children, be the children even posthumous: and this prescription is liable to all legal interruptions.

ART. 1562.—In all cases, in which the donation is revoked or dissolved, the donee is not bound to restore the fruits by him gathered previous to the demand for the revocation or rescission.

But in case of the non-fulfilment of conditions, which the donee is bound to fulfil, if it be proved to have proceeded from his fault, he may be condemned to restore the fruits by him received since his neglect to fulfil the conditions.

CHAPTER VI.

OF DISPOSITIONS MORTIS CAUSA (IN PROSPECT OF DEATH).

SECTION I.—*Of the Testament.*

ART. 1563.—No disposition *mortis causa* shall henceforth be made otherwise than by last will or testament. All other form is abrogated.

But the name given to the act of last will is of no importance, and dispositions may be made by testament under this title, or under that of institution of heir, of legacy, codicil, donation *mortis causa*, or under any other name indicating the last will, provided that the act be clothed with the forms required for the validity of a testament, and the clauses it contains, or the manner in which it is made clearly establish that it is a disposition of last will.

Thus an act of last will, by which an individual disposes of his property or of part thereof, in any manner whatsoever, whether he has instituted an heir or only named legatees, whether he has or has not charged any one with the execution of his last will, is considered as a testament, if it be, in other respects, clothed with the formalities required by law.

3 R. 78, 441; 17 L. 144; 2 A. 30.

ART. 1564.—A testament is the act of last will clothed with certain solemnities, by which the testator disposes of his property, either universally or by universal title, or by particular title.

ART. 1565.—A testament cannot be made by the same act, by two or more persons, either for the benefit of a third person, or under the title of a reciprocal or mutual disposition.

ART. 1566.—The custom of willing by testament, by the intervention of a commissary or attorney in fact is abolished.

Thus the institution of heir and all other testamentary dispositions committed to the choice of a third person, are null, even should that choice have been limited to a certain number of persons designated by the testator.

SECTION II.—*General Rules on the Form of Testaments.*

ART. 1567.—All testaments are divided into three principal classes, to wit:

1. Nuncupative or open testaments;
2. Mystic or sealed testaments;
3. Olographic testaments.

ART. 1568.—Testaments, whether nuncupative or mystic, must be drawn up in writing, either by the testator himself or by some other person, under his dictation.

6 L. 722.

ART. 1569.—The custom of making verbal testaments, that is to say, resulting from the mere deposition of witnesses, who were present when the testator made known to them his will, without his having committed it or caused it to be committed to writing, is abrogated.

ART. 1570.—Nuncupative testaments may be made by public act, or by act under private signature.

ART. 1571.—The nuncupative testaments by public act must be received by a notary public, in presence of three witnesses residing in the place where the will is executed, or of five witnesses not residing in the place.

This testament must be dictated by the testator, and written by the notary as it is dictated.

It must then be read to the testator in presence of the witnesses.

Express mention is made of the whole, observing that all those formalities must be fulfilled at one time, without interruption and without turning aside to other acts.

5 L. 100; 9 L. 458; 11 L. 361; 12 L. 114, 499; 13 L. 104; 16 L. 80; 15 L. 28; 12 R. 35, 639; 5 A. 565; 1 N. S. 73; 3 N. S. 367; 6 N. S. 143; 6 N. S. 263; 8 N. S. 458.

ART. 1572.—This testament must be signed by the testator; if he declares that he knows not how, or is not able to sign, express mention of his declaration, as also of the cause that hinders him from signing, must be made in the act.

See 12 L. 499.

ART. 1573.—This testament must be signed by the witnesses, or at least by one of them for all, if the others cannot write.

ART. 1574.—A nuncupative testament, under private signature, must be written by the testator himself or by any other person, from his dictation; or even by one of the witnesses, in presence of five witnesses residing in the place where the will is received, or of seven witnesses residing out of that place;

Or it will suffice if, in the presence of the same number of witnesses, the testator presents the paper, on which he has written his testament, or caused it to be written out of their presence, declaring to them that that paper contains his last will.

6 L. 722; 12 L. 483; 15 L. 28; 17 L. 4; 1 R. 48, 359; 2 A. 724; 1 N. S. 577.

ART. 1575.—In either case, the testament must be read by the testator to the witnesses, or by one of the witnesses to the rest, in presence of the testator; it must be signed by the testator, if he knows how or is able to sign, and by the witnesses or at least by two of them, in case the others know not how to sign, and those of the witnesses who do not know how to sign, must affix their mark.

This testament is subject to no other formality than those prescribed by this and the preceding article.

2 A. 724; 6 A. 243.

ART. 1576.—In the country it suffices for the validity of nuncupative testaments under private signature, if the testament be passed in the presence of three witnesses residing in the place where the testament is received, or of five witnesses residing out of that place, provided that in this case a greater number of witnesses cannot be had.

6 L. 722; 12 L. 483; 15 L. 28; 1 R. 48, 359; 2 A. 724; See 1 N. S. 488; 12 M. 503.

ART. 1577.—The mystic or secret testament, otherwise called the closed testament, is made in the following manner:

The testator must sign his dispositions, whether he has written them himself, or has caused them to be written by another person.

The paper containing those dispositions, or the paper serving as their envelope, must be closed and sealed.

The testator shall present it thus closed and sealed to the notary and to seven witnesses, or he shall cause it to be closed and sealed in their presence. Then he shall declare to the notary, in presence of the witnesses, that that paper contains his testament written by himself, or by another by his direction, and signed by him the testator. The notary shall then draw up the act of superscription, which shall be written on that paper or on the sheet that serves as its envelope, and that act shall be signed by the testator, and by the notary and the witnesses.

5 L. 387; 10 L. 319; 15 L. 88.

ART. 1578.—All that is above prescribed shall be done without interruption or turning aside to other acts; and in case the testator, by reason of any hindrance that has happened since the signing of the testament, cannot sign the act of superscription, mention shall be made of the declaration made by him thereof, without it being necessary, in that case, to increase the number of witnesses.

1 N. S. 73; 10 L. 319; 15 L. 88; See 12 R. 639.

ART. 1579.—Those who know not how or are not able to write, and those who know not how or are not able to sign their names, cannot make dispositions in the form of the mystic will.

ART. 1580.—If any one of the witnesses to the act of superscription know not how to sign, express mention shall be made thereof.

In all cases, the act must be signed at least by two witnesses.

ART. 1581.—The olographic testament is that which is written by the testator himself.

In order to be valid, it must be entirely written, dated and signed by the hand of the testator. It is subject to no other form, and may be made any where, even out of the State.

17 L. 4; 2 R. 427; 3 A. 579; See 12 M. 713; 5 M. 169.

ART. 1582.—Erasures not approved by the testator are considered as not made; and words added by the hand of another, as not written.

If the erasures are not so made as to render it impossible to distinguish the words covered by them, it shall be left to the discretion of the judge to declare if he considers them important, and in this case only to decree the nullity of the testament.

ART. 1583.—It suffices, for the validity of a testament, that it be valid under any one of the forms prescribed by law, however defective it may be in the form under which the testator may have intended to make it.

15 L. 23; 6 N. S. 263; 5 M. 169; 12 R. 35; 2 A. 667.

ART. 1584.—The following persons are absolutely incapable of being witnesses to testaments:

1. Women of what age soever;
2. Male children who have not attained the age of sixteen years complete;
3. Persons insane, deaf, dumb or blind;
4. Persons whom the criminal laws declare incapable of exercising civil functions;

5. Slaves.

11 L. 361; 12 L. 25; 2 A. 667.

ART. 1585.—Neither can testaments be witnessed by those who are constituted heirs or named legatees, under whatsoever title it may be.

12 R. 638.

ART. 1586.—Mystic testaments are excepted from the preceding article.

ART. 1587.—By the residence of the witnesses in the place where the testament is executed, is understood their residence in the parish where that testament is made; that residence is necessary only when it is expressly required by law.

5 L. 100; 6 L. 722.

ART. 1588.—The formalities, to which testaments are subject by the provisions of the present section, must be observed; otherwise the testaments are null and void.

5 L. 100, 387; 6 L. 722; 10 L. 319; 16 L. 80; 12 R. 25; 3 A. 579; 6 A. 243.

ART. 1589.—But testaments made in foreign countries, or in the other States and territories of the Union, shall take effect in this State, if they be clothed with all the formalities prescribed for the validity of wills in the place where they have been respectively made.

8 L. 685; 8 N. S. 232; 7 L. 135; 3 R. 235; 3 A. 579; See C. P. Art. 924 and amendments: See 5 M. 568, 642; 5 N. S. 48.

SECTION III.—*Particular Rules on the Form of certain Testaments.*

ART. 1590.—The wills of persons employed in armies in the field, or in a military expedition, may be received by a commissioned officer, in presence of two witnesses.

ART. 1591.—If the testator is sick or wounded, they may be received by the physician or surgeon attending him, assisted by two witnesses.

ART. 1592.—These testaments are subject to no other formalities than that of being reduced to writing, and being signed by the testator, if he can write, by the persons receiving them, and by the witnesses.

ART. 1593.—The testament, made in the form above prescribed, shall be null, six months after the return of the testator to a place, where he has an opportunity to employ the ordinary forms.

ART. 1594.—Testaments, made during a voyage at sea, may be received by the captain or master, in presence of three witnesses taken by preference from among the passengers; in default of passengers, from among the crew.

ART. 1595.—The testament made at sea, can contain no disposition in favor of any of the persons employed on board the vessel, unless they be relations of the testator.

ART. 1596.—This testament, like the preceding one, is subject to no other formality than that of being reduced to writing, and being signed by the testator, if he can write, by him who receives it, and by those in whose presence it is received.

ART. 1597.—The testament made at sea shall not be valid unless the testator dies at sea, or within three months after he has landed in a place, where he is able to make it in the ordinary forms.

SECTION IV.—*Of Testamentary Dispositions.*

ART. 1598.—Testamentary dispositions are either universal, under an universal title, or under a particular title.

Each of these dispositions, whether it be made under the name of institution of heir, or under the name of legacy, shall have its effect, according to the rules hereafter established for universal legacies, for legacies under an universal title, and for particular legacies.

8 L. 489; 17 L. 46.

§ 1.—*Of Universal Legacies.*

ART. 1599.—An universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease.

2 R. 1; 10 R. 512; 12 R. 56.

ART. 1600.—When, at the decease of the testator, there are heirs to whom a certain proportion of the property is reserved by law, these heirs are seized of right, by his death, of all the effects of the succession, and the universal legatee is bound to demand of them the delivery of the effects included in the testament.

8 L. 489; 15 L. 562; 3 A. 305.

ART. 1601.—Nevertheless, in the same case, the universal legatee will have the enjoyment of the effects included in the testament, from the day of the decease, if the demand for the delivery has been made within a year from that period; if not, this enjoyment will only commence from the day of the judicial demand, or from the day on which the delivery has been agreed upon.

ART. 1602.—When, at the decease of the testator, there are no heirs, to whom a proportion of his property is reserved by law, the universal legatee, by the death of the testator, is seized of right of the effects of the succession, without being bound to demand the delivery thereof.

8 L. 489; 15 L. 562; 10 R. 512; 3 A. 705; 12 R. 56.

ART. 1603.—The universal legatee, who concurs with an heir to whom the law has reserved a certain proportion of the effects of the succession, is bound for the debts and charges of the succession personally for his part and proportion, and in case of mortgage on his part, for the whole; and he is bound to discharge all the legacies, saving the case of reduction.

2 R. 382; 10 R. 512; 12 R. 56.

§ 2.—*Of Legacies under an Universal Title.*

ART. 1604.—The legacy, under an universal title, is that by which a testator bequeathes a certain proportion of the effects of which the law permits him to dispose, as an half, a third, or all his immovables, or all his movables, or a fixed proportion of all his immovables or of all his movables.

8 L. 48; 12 R. 56; 5 A. 199.

ART. 1605.—Legatees under an universal title are bound to demand the delivery of the heirs, to whom a proportion of the effects is reserved by law; in default of heirs, of the universal legatees; and in default of those, of the next heirs in the order established in the title of *successions*.

ART. 1606.—The legatee under an universal title is bound, like the universal legatee, for the debts and charges of the succession, personally for his part, and in case of mortgage on his portion, for the whole.

S L. 43; 5 A. 199.

ART. 1607.—When the testator has disposed only of a part of the disposable portion, and has done it under an universal title, the legatee under this title is bound to contribute with his natural heirs to the payment of particular legacies.

ART. 1608.—In no case can the instituted heir, under whatever title he may be, claim the falcidian portion, that is, the fourth which the law authorized the testamentary heir to retain from the succession, in case more than three-fourths of it were absorbed by the legacies; this right being abolished.

§ 3.—Of *Disinherison*.

ART. 1609.—Forced heirs may be deprived of their legitime, or legal portion, and of the seisin granted them by law, by the effect of disinherison by the testator, for just cause, and in the manner hereafter prescribed.

ART. 1610.—A disinherison, to be valid, must be made in one of the forms prescribed for testaments.

ART. 1611.—The disinherison must be made by name and expressly, and for a just cause, otherwise it is null.

ART. 1612.—There are no just causes of disinherison but those expressly recognized by law, in the following articles.

ART. 1613.—The just causes for which parents may disinherit their children, are ten in number, to wit:

1. If the child has raised his or her hand to strike the parent, or if he or she has really struck the parent; but a mere threat is not sufficient;

2. If the child has been guilty, towards a parent, of cruelty, of a crime or grievous injury;

3. If the child has attempted to take the life of either parent;

4. If the child has accused a parent of any capital crime, except, however, that of high treason;

5. If the child has refused sustenance to a parent, having the means to afford it;

6. If the child has neglected to take care of a parent, become insane;

7. If the child refused to ransom them, when detained in captivity;

8. If the child used any act of violence or coercion to hinder a parent from making a will;

9. If the child has refused to become security for a parent, having the means, in order to take him out of prison;

10. If the son or daughter, being a minor, marries without the consent of his or her parents.

2 L. 551; 2 A. 293.

ART. 1614.—The ascendants may disinherit their legitimate descendants, coming to their succession, for the first nine causes expressed in the preceding article, when the acts of ingratitude there mentioned have been committed towards them, instead of towards their parents; but they cannot disinherit their descendants for the latter cause.

ART. 1615.—Legitimate children, dying without issue, and leaving a parent, cannot disinherit him or her, unless for the seven following causes, to wit:

1. If the parent has accused the child of a capital crime, except, however, the crime of high treason;
2. If the parent has attempted to take the child's life;
3. If the parent has, by any violence or force, hindered the child from making a will;
4. If the parent has refused sustenance to the child in necessity, having the means of affording it;
5. If the parent has neglected to take care of the child, while in a state of insanity;
6. If the parent has neglected to ransom the child, when in captivity;
7. If the father or mother have attempted the life the one of the other, in which case the child or descendant, making a will, may disinherit the one who has attempted the life of the other.

ART. 1616.—The testator must express in the will for what reasons he disinherited his forced heirs or any of them, and the other heirs of the testator are moreover obliged to prove the facts on which the disinheritance is founded, otherwise it is null.

ART. 1617.—When all the forced heirs have been legally disinherited, the heir instituted universally is seized in full right of the succession, without being bound to demand the delivery of it, in the same manner as if there were no forced heirs, conformably to what is prescribed above.

§ 4.—*Of Particular Legacies.*

ART. 1618.—Every legacy, not included in the definition before given of universal legacies and legacies under an universal title, is a legacy under a particular title.

ART. 1619.—Every legacy under a particular title gives to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right may be transmitted to his heirs or assigns; and this takes place as well in testamentary dispositions, universal or under an universal title, as in those made under a particular title.

Nevertheless, the particular legatee can take possession of the thing bequeathed, or claim the proceeds or interest thereof, only from the day the demand of delivery was formed, according to the order herein before established, or from the day on which that delivery was voluntarily granted to him.

ART. 1620.—The legatee is not bound to demand the delivery of the legacy, if the thing bequeathed to him is in his possession at the time of the opening of the succession, but he is bound to give it up for the purpose of contributing to the payment of debts, in case it be liable for any.

ART. 1621.—Neither is the testamentary executor, who has the seisin of the effects of the succession, and who is at the same time a legatee, bound to demand the delivery of his legacy: he can retain it in his possession, subject to the same restitution.

ART. 1622.—The legatee who, of his own authority, takes possession of his legacy, is bound to restore the fruits and pay the interest of all moneys of which he may have possessed himself.

5 A. 265.

ART. 1623.—The delivery of legacies under a particular title must be demanded of the testamentary executor, who has the seisin of the succession. If the testamentary executor has not the seisin, or if his functions have expired, the legatees must apply to the heirs.

ART. 1624.—The interest or proceeds of the thing bequeathed shall accrue to the benefit of the legatee, from the day of the decease, without his having brought suit for the same:

1. When the testator has expressly declared in his will to that effect;

2. When an annuity or pension has been bequeathed by way of maintenance.

ART. 1625.—The costs of suing for delivery shall be at the charge of the succession, unless the testator has directed otherwise, and provided also that those costs shall cause no deduction of the legitime reserved to the forced heirs.

ART. 1626.—The heirs of the testator, or the debtors of a legacy, shall be personally bound to discharge it, each in proportion to the part that falls to him in the succession.

They shall be bound by mortgage for the whole, to the amount of the value of the immovable property of the succession withheld by them.

3 A. 491.

ART. 1627.—Particular legacies must be discharged in preference to all others, even though they exhaust the whole succession, or all that remains after the payment of the debts and the contributions for the legitimate portion, in case there are forced heirs.

8 L. 43; 11 L. 429; 17 L. 312.

ART. 1628.—If the effects do not suffice to discharge the particular legacies, the legacies of a certain object must first be taken out. The surplus of the effects must then be proportionally divided among the legatees of sums of money, unless the testator has expressly declared that such a legacy is given as a recompense for services.

11 L. 429.

ART. 1629.—The legacy bequeathed shall be delivered with every thing that appertains to it, in the condition in which it was on the day of the donor's decease.

2 N. S. 446.

ART. 1630.—When a person who has bequeathed the property of an immovable, has afterwards augmented it by new purchases, the property so purchased, though it be contiguous, shall not, without a new disposition, be considered as making part of the legacy.

It is otherwise as to improvements or new buildings raised on the ground bequeathed, or an inclosure of which the testator has enlarged the area.

ART. 1631.—If prior to the testament or subsequently, the thing has been mortgaged by the testator for his own debt or for that of an other, or if it be burdened with an usufruct, he who is to pay the legacy is not bound to discharge the thing bequeathed of the encumbrance, unless he be required to do it by an express disposition of the testator.

3 A. 175.

ART. 1632.—When the testator has bequeathed a thing belonging to another person, the legacy shall be null, whether the testator knew or knew not that the thing did not belong to him.

ART. 1633.—When the legacy is of an indeterminate thing, the heir is not obliged to give it of the best quality, nor can he offer it of the worst.

ART. 1634.—A legacy made to a creditor shall not be deemed to be in compensation of the debt, nor a legacy made to a servant in compensation of his wages.

ART. 1635.—The legatee by a particular title shall not be liable to the debts of the succession, except the reduction of the legacies as, is before provided, and except the action of mortgage of the creditors.

6 M. 707.

ART. 1636.—The legacy of a certain object is extinguished by the loss of the object; but if the object is only destroyed in part, as if a house bequeathed has been destroyed by fire, the legacy subsists for what remains, that is, for the land on which it was situated.

SECTION V.—*Of the Opening and the Proof of Testaments, and of Testamentary Executors.*

ART. 1637.—No testament can have effect unless it has been presented to the judge of the parish in which the testator died, if he died within the State, or in which his principal estates lie, if he died out of the State; the judge shall order the execution of the testament after its being opened and proved, in the cases prescribed by law.

7 L. 37; 10 L. 350; 12 L. 357; 3 N. S. 473; 16 L. 50; 6 A. 104.

ART. 1638.—The execution of a testament shall not be ordered until the decease of the testator has been sufficiently proved to the judge to whom the testament is presented.

ART. 1639.—When the decease of the testator has been sufficiently proved to the judge, to whom the testament is presented, he shall immediately proceed to open it, if it be sealed, and to the proof of it in presence of the notary and the witnesses who were present at the making of it, and who are on the spot, or duly called.

ART. 1640.—Nuncupative testaments, received by public acts, do

not require to be proved, that their execution may be ordered, they are full proof of themselves, unless they are alleged to be forged.

5 L. 100; 16 L. 80; 17 L. 4.

ART. 1641.—Nuncupative testaments under private signature cannot be executed, until they have been proved by the declaration on oath of at least three of the witnesses, who were present when they were made.

ART. 1642.—The declaration of the witnesses required for such proof must state in substance, not only that they recognize the testament presented to them as being the same that was written in their presence by the testator himself or by another person by his direction, or which the testator had written or caused to be written out of their presence, and which he declared to them contained his last will, as the case may be; but also that they recognize their signatures and that of the testator at the foot of the testament, if they have signed it, or the signature of him who signed for them respectively, in case of their not having signed for want of knowing how.

ART. 1643.—The execution of mystic testaments cannot be ordered until they have been in like manner proved by the declaration on oath, of at least four of the witnesses who were present at the act of superscription.

ART. 1644.—The declaration of the witnesses required for the proof of mystic testaments, must state in substance, that they recognize the sealed packet presented to them to be the same that the testator delivered to the notary in their presence, declaring to him that it contained his testament; and also that they recognize their signatures and that of the notary at the foot of the superscription, if they have signed it, or the signature of him who signed for them respectively, if, not knowing how to write, they did not themselves sign the act of superscription.

ART. 1645.—When the notary who has passed the act of superscription is one of the witnesses appearing, his declaration on oath, with that of two witnesses only, is sufficient proof of a testament.

ART. 1646.—If any of the witnesses who were present at the making of the nuncupative testament under private signature, or at the act of superscription of the mystic testament, be dead or absent, so that it be not possible to procure the number of witnesses prescribed by law for proving the testament, it will be sufficient to prove it by the declarations of the witnesses living, who are in the State.

ART. 1647.—If none of the persons who were present at such acts are living in the State, but all are absent or deceased, it will be sufficient for the proof of the testament if two credible persons make a declaration on oath that they recognise the signatures of the different persons who have signed the will or the act of superscription.

ART. 1648.—The olographic testament shall be opened, if it be sealed; and it must be acknowledged and proved by the declaration of two credible persons, who must attest that they recognise the testament as being entirely written, dated and signed in the testator's handwriting, as having often seen him write and sign during his lifetime.

ART. 1649.—When a nuncupative testament has been put under an envelope, or sealed, merely through precaution on the part of the testator, without any act of superscription or any indication of the names of the witnesses who have signed the testament, the judge shall open it in presence of the party requiring it, and of two witnesses called in for that purpose.

2 R. 427.

ART. 1650.—When the judge has complied with all the formalities required for opening and proving a testament, he shall order its execution, and he shall moreover direct that such testaments as have not been passed by public act, be filed, after having inscribed on them his *paraph ne varietur*, at the top and bottom of each page.

2 R. 427.

ART. 1651.—The execution of the dispositions contained in testaments, is usually confided by the testator to one or more testamentary executors.

ART. 1652.—The testator may give his testamentary executor the seisin of the whole of his succession, or only of a certain determinate portion, according as he has expressed himself, saving the restrictions contained in the following articles.

But this seisin cannot continue beyond a year and a day from the decease of the testator, if he died in the State, or from the day on which his death was first known, if he died out of the State.

If the testator has not granted the seisin to the testamentary executor, the latter cannot require it.

1 L. 165; 6 L. 97; 10 L. 29; See 5 A. 645; 15 L. 69.

ART. 1653.—The testator may express his intention to grant the seisin of his estate to the testamentary executor, either in express terms, by authorizing him to *take possession of the whole, or a part of the estate of his succession after his death*, or by merely appointing him testamentary executor and detainer of his estate, the word *detainer* sufficiently announcing that the executor is to be seized of the property of the succession.

But if the executor testamentary be merely appointed testamentary executor without any other power, his functions are confined to see to the execution of the legacies contained in the will, and to cause the inventory and other conservatory acts of the property of the succession to be made.

10 L. 29; 12 L. 73; See 15 L. 69.

ART. 1654.—When of the testator's heirs some are absent and not represented in the State, the judge shall appoint for them a counsel, whose duty it shall be to assist for them at the inventory of the effects left by the testator, to take care of their interests, and to oppose every thing which may prejudice the same.

7 N. S. 615; 6 L. 653; 12 L. 73; 15 L. 66, 69; 7 R. 167.

ART. 1655.—It shall also be the duty of this counsel to inform, with all possible diligence, those whom he represents, of the opening of the succession, and to correspond with them; and when he has once accepted this charge, he cannot divest himself of it until the heirs have sent their power of attorney, or until the succession is liquidated.

6 L. 653; 15 L. 66, 69.

ART. 1656.—He who cannot obligate himself cannot be a testamentary executor.

ART. 1657.—A married woman cannot accept a testamentary executorship without the consent of her husband.

If there is between them a separation of property, she may accept it with the consent of her husband, or, on his refusal, she may be authorized by the court, conformably to what is prescribed by the title of *husband and wife*.

3 R. 368.

ART. 1658.—A minor cannot be testamentary executor, even with the authorization of his tutor or curator.

ART. 1659.—The testamentary executor shall cause the seals to be affixed, if there be any minor, interdicted or absent heirs; he shall cause an inventory of the property of the succession to be made in the different parishes in which the testator has left property, by the parish judge or by any notary public duly authorized to that effect by the judge.

12 L. 357; See 15 L. 69.

ART. 1660.—The presumptive heirs present, and the counsel of the absent heirs, must be notified to attend at the taking of the inventory.

ART. 1661.—In default of funds sufficient to discharge the debts and legacies of sums of money, the testamentary executor shall cause himself to be authorized by the court to sell the movables and the slaves not employed on plantations, and if they are insufficient, the immovables to a sufficient amount to satisfy those debts and legacies.

6 L. 167; 17 L. 312; See 15 L. 69.

ART. 1662.—Except in the cases provided for in the preceding article, he cannot cause the immovables, nor the slaves employed thereon, to be sold, unless he is authorized by the will to do so.

ART. 1663.—The testamentary executor shall proceed to the sale above mentioned and to the payment of the debts of the succession, in the same manner as is prescribed for curators of vacant successions.

14 L. 111; 15 L. 69; 17 L. 312.

ART. 1664.—The heirs can at any time take the seisin from the testamentary executor, on offering him a sum sufficient to pay the movable legacies.

See amendment to art. 1005: 7 L. 384; 17 L. 312; 13 L. 1; 2 R. 382; 3 R. 349; 10 R. 193; 3 A. 705;

6 A. 64.

ART. 1665.—The testamentary executor is bound, even after the expiration of his seisin, to see the testament faithfully executed.

1 L. 165; See 10 R. 193.

ART. 1666.—He must render an account of his administration at the expiration of the year, commencing from the moment in which he had the seisin.

Stat. 13th March, 1837, § 96.—§ 6. All executors, administrators, curators of vacant successions and syndics, shall at least once in every twelve months render to the probate court a full, fair and perfect account of their administration, and on failure so to do, shall be dismissed from office, and pay ten per cent. per annum interest, on all sums for which he may be responsible from the date of the expiration of the twelve months aforesaid.

1 N. S. 243; 12 L. 613; 15 L. 69; 2 R. 351.

ART. 1667.—But after the rendition of this account, the judge may continue him in his functions, if the absent heirs have not appeared or have not claimed their rights, on obliging him to give security for the sum or effects remaining in his hands.

6 L. 167; 13 L. 1; 2 R. 351.

ART. 1668.—If the testamentary executor is not continued in his functions, he must pay into the treasury of the State the balance in favor of the succession, in ten days after the approval and final settlement of his account, if he lives within fifty miles of the treasurer's office, and if he reside at a further distance, he shall be allowed one day for every twenty miles in addition to the above time.

ART. 1669.—The testamentary executor, even after the expiration of his administration, is bound to continue to defend the suits commenced by or against him on account of the succession, until the heirs appear or cause themselves to be represented.

See amendment to art. 1179; 7 N. S. 615; 10 L. 435; 16 L. 344.

ART. 1670.—The testamentary executor is not bound to accept the executorship, nor to give security, when he does accept it.

ART. 1671.—If the testator has omitted to name a testamentary executor, or if the one named refuses to accept, the judge shall appoint one *ex officio*.

10 L. 530; 17 L. 486; 18 L. 392, 394; 2 R. 391; 3 A. 565; C. P. 924, 5, 7, 8.

ART. 1672.—The testamentary executor, thus appointed by the judge, and called the dative testamentary executor, is bound to give security in the same manner as curators of vacant successions.

18 L. 394.

ART. 1673.—The powers of the testamentary executor do not go to his heirs.

ART. 1674.—If there be several executors who have accepted, any one of them may act for them all, but they shall all be jointly and severally accountable for the property subject to the executorship, unless the testator has divided their functions, and each of them has confined himself to that which to him was allotted.

11 R. 109; 1 A. 214; 3 A. 574.

ART. 1675.—The expenses incurred by the executor for affixing the seals, for the inventory, for the accounts and the other charges relative to his functions, shall be defrayed out of the succession.

3 A. 624.

ART. 1676.—An executor who has had the seisin of all the estate of the succession, whether he were charged to sell it or not, shall be entitled, for his trouble and care, to a commission of two and a half per cent. on the whole amount of the estimate of the inventory, making a deduction for what is not productive, and for what is due by insolvent debtors.

6 L. 324; 7 L. 362; 10 L. 29; 12 L. 73; 1 R. 400; 2 R. 445; 3 A. 624; 6 A. 487; See 5 N. S. 229; 3 L. 464; 4 A. 386; See 1062, 1187, 1188.

ART. 1677.—If the executor has not had a general seisin, his commission shall only be on the estimated value of the object which he has had in his possession, and on the sums put into his hands for the purpose of paying the legacies and other charges of the will.

10 L. 29; 12 L. 608.

ART. 1678.—The commission shall be shared among the executors, if there be several, and if their functions are not divided by the testator.

In this latter case, they shall be entitled to a commission on what has fallen to the administration of each respectively.

6 L. 324; 11 L. 224.

ART. 1679.—Testamentary executors, to whom the testator has bequeathed any legacies or other gifts by his will, shall not be entitled to any commission, unless the testator has formally expressed the intention that they should have the legacies over and above their commission.

6 L. 324; 15 L. 224; 1 A. 129; 3 A. 705; See 4 R. 397.

ART. 1680.—In no case shall the commission allowed to the testamentary executors affect the legitime reserved to the forced heirs of the testators.

ART. 1681.—Testaments made in foreign countries and other States of the Union, cannot be carried into effect on property in this State, without being registered in the court within the jurisdiction of which the property is situated, and the execution thereof ordered by the judge.

6 N. S. 621; 13 L. 221; 17 L. 4, 486; 18 L. 570.

ART. 1682.—This order of execution shall be granted without any other form than that of registering the testament, if it be established that the testament has been duly proved before a competent judge of the place where it was received. In the contrary case, the testament cannot be carried into effect, without its being first proved before the judge of whom the execution is demanded.

8 N. S. 585; 13 L. 293; 17 L. 4; 2 R. 427; 3 R. 31; 6 R. 235.

SECTION VI.—*Of the Revocation of Testaments and of their Caducuity.*

ART. 1683.—Testaments are revocable at the will of the testator until his decease.

The testator cannot renounce this right of revocation, nor obligate himself to exercise it only under certain words and restrictions, and if he does so, such declaration shall be considered as not written.

2 A. 78.

ART. 1684.—The revocation of testaments by the act of the testator is express or tacit, general or particular.

It is express when the testator has formally declared in writing that he revokes his testament, or that he revokes such a legacy or a particular disposition.

It is tacit, when it results from some other disposition of the testator, or from some act which supposes a change of will.

It is general, when all the dispositions of a testament are revoked.

It is particular, when it falls on some of the dispositions only, without touching the rest.

3 R. 31; 2 A. 73.

ART. 1685.—The act by which a testamentary disposition is revoked, must be made in one of the forms prescribed for testaments, and clothed with the same formalities.

ART. 1686.—Posterior testaments, which do not in an express manner, revoke the prior ones, annul in the latter only such of the dispositions there contained as are incompatible with the new ones, or contrary to them, or entirely different.

11 L. 220; 12 L. 19; 3 R. 31; 1 A. 444; 2 A. 78.

ART. 1687.—A revocation made in a posterior testament has its entire effect, even though this new act remains without execution, either through the incapacity of the person instituted, or of the legatee, or through his refusal to accept it; provided it is regular as to its form.

4 L. 423.

ART. 1688.—A donation *inter vivos* or a sale made by the testator of the whole or a part of the thing bequeathed as a legacy, amounts to a revocation of the testamentary disposition, for all that has been sold or given, even though the sale or donation be null, and the thing have returned into the possession of the testator, whether by the effects of that nullity, or by any other means.

ART. 1689.—The sale, made by the testator, of an object bequeathed, even by act under private signature, after the date of the testament, produces a revocation of the legacy, if the act be entirely written, signed and dated with his hand.

ART. 1690.—The testamentary disposition becomes without effect, if the person instituted or the legatee does not survive the testator.

17 L. 46.

ART. 1691.—Every testamentary disposition made on a condition depending on an uncertain event, so that in the intention of the testator the disposition shall take place only inasmuch as the event shall or shall not happen, is without effect, if the instituted heir or the legatee dies before the accomplishment of the condition.

ART. 1692.—A condition which, in the intention of the testator, does but suspend the execution of the disposition, does not hinder the instituted heir or the legatee from having a right acquired and transmissible to his heirs.

ART. 1693.—The legacy falls, if the thing bequeathed has totally perished during the lifetime of the testator.

ART. 1694.—It likewise falls, if the thing has perished since his death, without the act or fault of the heir, although the latter may have delayed to deliver it, when it must equally have perished in the possession of the legatee.

ART. 1695.—In case of an alternative legacy of two things, if one of them perishes, the legacy subsists as to that which remains.

ART. 1696.—The testamentary disposition falls, when the instituted heir or the legatee rejects it, or is incapable of receiving it.

17 L. 46.

ART. 1697.—Legatees under an universal title, and legatees under a particular title, benefit by the failure of those particular legacies which they were bound to discharge.

10 R. 512; 12 R. 56.

ART. 1698.—The testament falls by the birth of legitimate children of the testator, posterior to its date.

ART. 1699.—The right of accretion relative to testamentary dispo-

sitions, shall no longer subsist, except in the cases provided for in the two following articles.

ART. 1700.—Accretion shall take place for the benefit of the legatees, in case of the legacy being made to several *conjointly*.

The legacy shall be reputed to be made conjointly, when it is made by one and the same disposition without the testator's having assigned the part of such co-legatee in the thing bequeathed.

4 N. S. 246; 8 L. 43; 10 R. 512; 6 A. 12.

ART. 1701.—It shall also be reputed to be made conjointly, when a thing, not susceptible of being divided without deterioration, has been given by the same act to several persons, even separately.

10 R. 512.

ART. 1702.—Except in the cases prescribed in the two preceding articles, every portion of the succession remaining undisposed of, either because the testator has not bequeathed it, either to a legatee or to an instituted heir, or because the heir or the legatee has not been able, or has not been willing to accept it, shall devolve upon the legitimate heirs.

10 R. 512; 12 R. 56.

ART. 1703.—The same causes which, according to the foregoing provisions of the present title, authorize an action for the revocation of a donation *inter vivos*, are sufficient to ground an action of revocation of testamentary dispositions; provided, however, that no charges or conditions can be imposed by the testator on the legitimate portion of forced heirs, nor can they lose their inheritance for any act of ingratitude to the testator, prior to his decease. That he has not disinherited them shall be sufficient evidence of his having forgiven the offence.

ART. 1704.—If the action be founded on a grievous injury done to the memory of the testator, it must be brought within a year from the day of the offence.

SECTION VII.—*General Rules for the Interpretation of Legacies.*

ART. 1705.—In the interpretation of acts of last will, the intention of the testator must principally be endeavored to be ascertained, without departing, however, from the proper signification of the terms of the testament.

7 L. 226; 8 L. 43, 439.

ART. 1706.—A disposition must be understood in the sense in which it can have effect, rather than that in which it can have none.

7 L. 226.

ART. 1707.—In case of ambiguity or obscurity in the description of the legatee, as, for instance, when a legacy is bequeathed to one of two individuals bearing the same name, the inquiry shall be which of the two was upon terms of the most intimate intercourse or connection with the testator, and to him shall the legacy be decreed.

ART. 1708.—When, from the terms made use of by the testator, his intention cannot be ascertained, recourse must be had to all circumstances which may aid in the discovery of his intention.

1 A. 444; 2 A. 580.

ART. 1709.—A mistake in the name of an object bequeathed, is of no moment, if it can be ascertained what the thing was which the testator intended to bequeathe.

ART. 1710.—If it cannot be ascertained whether a greater or less quantity has been bequeathed, it must be decided for the least.

8 L. 489; 12 L. 73.

ART. 1711.—A general legacy does not embrace those things included under the genus, which have been acquired after the death of the testator, though by his order.

ART. 1712.—A general legacy does not embrace the things included under the genus, which have been bequeathed in particular to other persons.

ART. 1713.—A disposition, couched in terms present and past, does not extend to that which comes afterwards.

For example, a legacy of all the books a testator possesses does not include those which he has purchased after the date of the testament.

8 L. 489.

ART. 1714.—A disposition, couched in the future tense, refers to the time of the death of the testator.

Thus, a legacy of all the furniture there shall be in the house of the testator, includes that which he has purchased since the date of the testament as well as the rest.

8 L. 489.

ART. 1715.—A disposition, the terms of which express no time neither past nor future, refers to the time of making the will.

Thus, when the testator expresses simply that he bequeathes his plate to such a one, the plate that he possessed at the date of the will, is only included.

8 L. 489.

ART. 1716.—When a person has ordered two things, which are contradictory, that which is last written, is presumed to be the will of the testator, in which he has persevered, and a derogation to what has before been written to the contrary.

CHAPTER VII.

OF PARTITIONS MADE BY PARENTS AND OTHER ASCENDANTS AMONG THEIR DESCENDANTS.

ART. 1717.—Fathers and mothers and other ascendants may make a distribution and partition of their property among their children and legitimate descendants, either by designating the *quantum* of the parts and partitions which they assign to each of them, or in designating the property that shall compose their respective lots.

ART. 1718.—Those partitions may be made by act *inter vivos* or by testament.

ART. 1719.—Those made by an act *inter vivos* can have only present property for their object, and are subject to all the formalities and conditions of donations *inter vivos*.

ART. 1720.—Those made by testament, must be made in the forms prescribed for acts of that kind, and are subject to the same rules.

ART. 1721.—If the partition, whether *inter vivos* or by testament, has not comprised all the property that the ascendant leaves on the day of his decease, the property, not comprised in the partition, is divided according to law.

ART. 1722.—If the partition, whether *inter vivos* or by testament, be not made amongst all the children living at the time of the decease and the descendants of those predeceased, the partition shall be null and void for the whole; the child or descendant, who had no part in it, may require a new partition in legal form.

ART. 1723.—Partitions, made by ascendants, may be avoided, when the advantage secured to one of the co-heirs exceeds the disposable portion.

ART. 1724.—The child who objects to the partition made by the ascendant, must advance the expenses of having the property estimated, and must ultimately support them and the costs of suit, if his claim be not founded.

ART. 1725.—The defendant in the action of rescission may arrest it by offering to the plaintiff the supplement of the portion to which he has a right.

ART. 1726.—The rescission of the partition does not carry with it the nullity of a donation made as an advantage.

CHAPTER VIII.

OF DONATIONS MADE BY MARRIAGE CONTRACT TO THE HUSBAND OR WIFE, AND TO THE CHILDREN TO BE BORN OF THE MARRIAGE.

ART. 1727.—Every donation *inter vivos*, though made by marriage contract to the husband and wife or to either of them, is subject to the general rules prescribed for the donations made under that title.

It cannot take effect for the benefit of children not yet born.

16 L. 271.

ART. 1728.—Fathers and mothers, the other ascendants, the collateral relations of either of the parties to the marriage, and even strangers, may give the whole or a part of the property they shall leave on the day of their decease, both for the benefit of the parties, and for that of the children to be born of their marriage, in case the donor survive the donee.

Such a donation, though made for the benefit of the parties to the marriage, or for one of them, is always, in case of the survivorship of the donor, presumed to be made for the benefit of the children or descendants to proceed from that marriage.

ART. 1729.—A donation, in the form specified in the preceding article, is irrevocable only in this sense, that the donor can no longer dispose of the objects comprised in the donation, on a gratuitous title, unless it be for moderate sums, by way of recompense or otherwise.

The donor retains till death the full liberty of selling and mortgaging, unless he has formally barred himself of it in the whole or in part.

ART. 1730.—A donation in favor of marriage may be made cumulatively of the property present and future, provided that to the act be annexed a statement of the debts and charges of the donor, existing on the day of the donation, in which case the donee, on the decease of the donor, may accept merely the present property, renouncing the surplus of the property of the donor.

19 L. 523.

ART. 1731.—If the statement, mentioned in the preceding article, has not been annexed to the act containing a donation of present and future property, the donee shall be obliged to accept or reject that donation wholly; and in case of acceptance, he shall claim only the property existing on the day of the donor's decease, and he shall be liable to the payment of all the charges and debts of the succession.

ART. 1732.—Donations made by marriage contract cannot be impeached or declared void on pretence of a want of acceptance.

ART. 1733.—Every donation made in favor of marriage, falls, if the marriage does not take place.

4 A. 337.

ART. 1734.—Donations made to the husband or the wife, on the terms of articles 1728 and 1730, fall, if the donor survive the donee and his or her posterity.

ART. 1735.—All donations made to a married couple by their marriage contract, are, at the time of the opening of the succession of the donor, reducible to the portion that the law permitted him to dispose of

S M. 707; 6 N. S. 196; See 7 R. 429.

CHAPTER IX.

OF DONATIONS BETWEEN MARRIED PERSONS, EITHER BY MARRIAGE CONTRACT OR DURING THE MARRIAGE.

ART. 1736.—Married persons can, by marriage contract, make to each other reciprocally, or the one to the other, what donations they think proper, under the modifications hereafter expressed.

1 N. S. 465; 19 L. 523.

ART. 1737.—Every donation *inter vivos*, of present property, made between married persons by marriage contract, shall not be deemed to be done on the condition of the survivorship of the donee, if that condition be not formally expressed, and it is subject to all the rules above prescribed for those kinds of donations.

16 L. 271; 19 L. 523.

ART. 1738.—A donation of property in future, or of property present and in future, made between married persons by marriage contract, whether simple or reciprocal, shall be subject to the rules established by the preceding chapter, with regard to similar donations made to them by a third person, except that it shall not be transmissible to the children, the issue of the marriage, in case of the death of the donee before the donor.

19 L. 523.

ART 1739.—One of the married couple may, either by marriage

contract or during the marriage, in case of his or her leaving no children nor legitimate descendants, give to the other in full property, all that he or she might give to a stranger.

And in case the donor leaves children or legitimate descendants, he can give to the other either a tenth part in full property, or the usufruct only of one-fifth of all his property.

Stat. 21 March, 1850, p. 228.—Article one thousand seven hundred and thirty-nine of the Civil Code, which reads thus: "One of the marriage couple may either by marriage contract, or during the marriage, in case of his or her leaving no children nor legitimate descendants, give to the other in full property, all that he or she might give to a stranger."

"And in case the donor leaves children or legitimate descendants, he can give to the other either a tenth part in full property, or the usufruct only of one-fifth of all his property," be and the same is hereby altered and amended so as to read as follows: "Either of the married couple may either by marriage contract, or during the marriage give to the other in full property, all that he or she might give to a stranger."

1 N. S. 465; 6 L. 231; 15 L. 562; 19 L. 528; 1 A. 142; 2 A. 30.

ART. 1740.—The husband or wife, if a minor emancipated, can, by marriage contract, give to each other, either by simple or by reciprocal donation whatever can be given by one of the parties who has attained the age of majority.

ART. 1741.—A minor, not being emancipated, can give only with the consent of those relations whose consent is requisite for the validity of the marriage, and with that consent he or she can give all that the law permits a married person of full age to give to his or her consort.

If the relations, whose consent is necessary, be dead, the minor not emancipated cannot give without the authorization of a court of justice.

ART. 1742.—All donations made between married persons, during marriage, though termed *inter vivos*, shall always be revocable.

The revocation may be made by the wife, without her being authorized to that effect by her husband or by a court of justice.

ART. 1743.—Those donations shall not be revoked by the birth of children, provided they do not exceed the *quantum*, which married persons are permitted to dispose of to each other, to the prejudice of their children, or legitimate descendants, as is above provided.

ART. 1744.—Married persons cannot, during marriage, make to each other, by an act, either *inter vivos* or *mortis causa*, any mutual or reciprocal donation by one and the same act.

10 M. 183.

ART. 1745.—A man or woman who contracts a second or subsequent marriage having children by a former one, can give to his wife, or she to her husband, only the least child's portion, and that only as an usufruct; and in no case shall the portion, of which the donee is to have the usufruct, exceed the fifth part of the donor's estate.

O. C. p. 258; Arts. 226, 227; 2 A. 30; 19 L. 528; See 7 N. S. 665.

ART. 1746.—If a person who marries a second time has children of his or her preceding marriage, he or she cannot, in any manner, dispose of the property given or bequeathed to him or her by the deceased spouse,

or which came to him or her from a brother or sister of any of the children which remain.

This property, by the second marriage, becomes the property of the children of the preceding marriage, and the spouse, who marries again, only has the usufruct of it.

6 N. S. 31; 15 L. 106; 1 A. 142.

ART. 1747.—Husbands and wives cannot give to each other, indirectly, beyond what is permitted by the foregoing dispositions.

All donations disguised, or made to persons interposed, shall be null and void.

6 A. 673; 1 L. 179.

ART. 1748.—All donations made by one of the married parties to the children or to any one of the children of the other party by a former marriage, and such as are made by the donor to relations to whom the other party is presumptive heir on the day of the donation, although the latter may not survive the relation who is the donee, shall be deemed made to persons interposed.

TITLE III.

OF OBLIGATIONS.

CHAPTER I.

OF THE NATURE AND DIVISION OF OBLIGATIONS.

ART. 1749.—An obligation is, in its general and most extensive sense, synonymous with duty.

ART. 1750.—Obligations are of three kinds: imperfect obligations, natural obligations, and civil or perfect obligations.

1. If the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called imperfect obligation, and creates no right of action, nor has it any legal operation. The duty of exercising gratitude, charity, and the other merely moral duties, is an example of this kind of obligation.

2. A natural obligation is one which cannot be enforced by action, but which is binding on the party who makes it, in conscience and according to natural justice.

3. A civil obligation is a legal tie, which gives the party with whom it is contracted, the right of enforcing its performance by law.

ART. 1751.—Natural obligations are of four kinds:

1. Such obligations as the law has rendered invalid for the want of certain forms or for some reason of general policy, but which are not in themselves immoral or unjust;

2. Such as are made by persons having the discretion necessary to

enable them to contract, but who are yet rendered incapable of doing so by some provision of law ;

3. When the action is barred by prescription, a natural obligation still subsists, although the civil obligation is extinguished ;

4. There is also a natural obligation on those who inherit an estate, either under a will or by legal inheritance, to execute the donations or other dispositions which the former owner had made, but which are defective for want of form only.

2 L. 428 ; 2 A. 667.

ART. 1752.—Although natural obligations cannot be enforced by action, they have the following effect :

1. No suit will lie to recover what has been paid, or given in compliance with a natural obligation ;

2. A natural obligation is a sufficient consideration for a new contract.

ART. 1753.—Civil obligations in relation to their origin, are of two kinds :

1. Such as are created by the force of the law ;

2 L. 428 ; 14 L. 34 ; 15 L. 378 ; 19 L. 154, 185 ; 4 R. 495 ; 7 R. 529 ; 12 R. 273 ; 1 A. 265.

2. Such as arise from the consent of the parties who are bound by them, which are called contracts or conventional obligations ;

3 A. 101, 501 ; 4 A. 401 ; 5 A. 669 ; See 3 A. 492 ; 7 R. 522 ; 9 R. 324 ; 4 A. 550.

Each of these divisions will form the subject of a separate title:

TITLE IV.

OF CONVENTIONAL OBLIGATIONS.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1754.—A contract is an agreement, by which one person obligates himself to another, to give, to do, or permit, or not to do something expressed or implied by such agreement.

6 L. 415.

ART. 1755.—A contract must not be confounded with the instrument in writing by which it is witnessed. The contract may subsist, although the written act may, for some defect, be declared void ; and the written act may be good and authentic, although the contract it witnesses be illegal. The contract itself is only void for some cause or defect determined by law.

1 N. S. 420 ; 4 L. 77.

ART. 1756.—In any contract, for the breach of which damages could be recovered, or which could be specifically enforced between the original parties, the obligation is incurred, and the right is vested in their

representatives, although they are not specially named, unless it results from the nature of the agreement.

ART. 1757.—All things that are not forbidden by law may legally become the subject of, or the motive for, contracts; but different agreements are governed by different rules adapted to the nature of each contract, to distinguish which it is necessary in every contract to consider:

1. That which is the essence of the contract, for the want whereof there is either no contract at all, or a contract of another description. Thus a price is essential to the contract of sale; if there be none, it is either no contract, or if the consideration be other property, it is an exchange;

2. Things which, although not essential to the contract, yet are implied from the nature of such agreement, if no stipulation be made respecting them, but which the parties may expressly modify or renounce, without destroying the contract or changing its description; of this nature is warranty, which is implied in every sale, but which may be modified or renounced, without changing the character of the contract or destroying its effect;

3. Accidental stipulations, which belong neither to the essence nor the nature of the contract, but depend solely on the will of the parties. The term given for the payment of a loan, the place at which it is to be paid, and the nature of the rent payable on a lease, are examples of accidental stipulations.

What belongs to the essence and to the nature of each particular description of contract, is determined by the law defining such contracts; accidental stipulations depend on the will of the parties, regulated by the general rules applying to all contracts.

V. art. 2255; 5 M. 422; 1 N. S. 456; 2 R. 169; 4 L. 22; See 13 L. 257.

ART. 1758.—To all contracts there must be at least two parties, one who does, or engages to do or not to do, another to whom the engagement is made. If this latter party make no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance.

It is called a reciprocal contract, when the parties expressly enter into mutual engagements.

Sec 7 L. 233, 240.

ART. 1759.—No contract is complete without the assent of both parties. In reciprocal contracts it must be expressed. In some unilateral contracts, the law provides that under certain circumstances it shall be presumed.

1 L. 188; 13 L. 539.

ART. 1760.—Contracts, considered in relation to their substance, are either commutative, or independent, principal or accessory.

ART. 1761.—Commutative contracts are those in which what is done, given, or promised by one party, is considered an equivalent to, or a consideration for what is done, given, or promised by the other.

ART. 1762.—Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations.

ART. 1763.—A contract, containing mutual covenants, shall be presumed to be commutative, unless the contrary be expressed.

ART. 1764.—A principal contract is one entered into by both parties, on their accounts, or in the several qualities they assume. An accessory contract is made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage and pledge.

ART. 1765.—Contracts, considered in relation to the motive for making them, are either gratuitous or onerous.

6 L. 231, 244; See 1 A. 132.

ART. 1766.—To be gratuitous, the object of a contract must be to benefit the person with whom it is made, without any profit or advantage, received or promised as a consideration for it. It is not, however, the less gratuitous, if it proceed either from gratitude for a benefit before received, or from the hope of receiving one hereafter, although such benefit be of a pecuniary nature.

ART. 1767.—Any thing given or promised as a consideration for the engagement or gift, any service, interest or condition, imposed on what is given or promised, although unequal to it in value, makes a contract onerous in its nature.

ART. 1768.—Considered in relation to their effects, contracts are either certain or hazardous.

ART. 1769.—A contract is hazardous, when the performance of that which is one of its objects, depends on an uncertain event.

It is certain, when the thing to be done is supposed to depend on the will of the party, or when in the usual course of events it must happen in the manner stipulated.

ART. 1770.—Contracts in general, under whatever denomination they may come, and whether they may or may not be included in any of the above divisions, are subject to certain rules, which are the subject of this title.

6 L. 231, 244.

ART. 1771.—Certain contracts are regulated by rules, which are established in the parts of the code which treat of those contracts.

1 A. 249.

CHAPTER II.

OF THE REQUISITES TO THE FORMATION OF A VALID AGREEMENT.

ART. 1772.—Four requisites are necessary to the validity of an agreement:

1. Parties legally capable of contracting;
2. Their consent legally given;
3. A certain object, which forms the matter of agreement;
4. A lawful purpose.

See 1 A. 176; See 2 R. 163.

SECTION I.—*Of the Parties to a Contract, and of their Capability to Contract.*

ART. 1773.—Those only are parties to a contract, who have given their assent to it, either expressly or by implication.

13 L. 264.

ART. 1774.—The cases, in which assent is implied, are particularly determined by law.

ART. 1775.—All persons have the capability to contract, except those whose incapacity is specially declared by law. These are persons of insane mind, slaves, those who are interdicted, minors, married women.

5 N. S. 527, 651; 7 N. S. 341; 15 L. 13; 5 R. 295; 11 R. 506 2 A. 418; 5 A. 1; See 379, 1773, 1867, 2222, 2420.

ART. 1776.—All cases of incapacity are subject to the following modifications and exceptions.

ART. 1777.—Persons interdicted can, in no cases whatever, make a valid contract after the petition has been presented for their interdiction, until it be legally removed.

ART. 1778.—Minors emancipated may contract in the cases already provided by law, and when not emancipated, their contracts are valid, if made with the intervention of their tutors or curators, and with the assent of a family meeting, in the cases where by law it is required.

When the minor has no tutor or curator, or they neglect to supply him with necessaries for his support or education, a contract or quasi contract for providing him with what is necessary for those purposes, is valid.

A minor is also capable of accepting the contract of mandate, under the restrictions and modifications contained in the title on that subject.

His stipulations in a marriage contract, if made with the assent of those whose authority is in such case required by law, are also valid.

The obligation arising from an *offence* or *quasi offence*, is also binding on the minor.

In all other cases, the minor is incapacitated from contracting, but his contracts may be rendered valid by ratification, either expressed or implied, in the manner and on the terms stated in this title under the head of *nullity or rescission of agreements*.

5 N. S. 651; 15 L. 13; 2 A. 367; See 379, 1775, 1867; See 1 N. S. 537; 3 N. S. 400; 8 N. S. 196.

ART. 1779.—The incapacity of the wife is removed by the authorization of the husband, or, in cases provided by law, by that of the judge.

3 R. 329; See 10 L. 161; 11 L. 538; 1 R. 230; 11 R. 506.

The authorization of the husband to the commercial contracts of the wife is presumed by law, if he permits her to trade in her own name; to her contracts for necessaries for herself and family, where he does not himself provide them; and to all her other contracts, when he is himself a party to them.

10 L. 163; 3 R. 329; 6 R. 292.

The unauthorized contracts made by married women, like the acts of minors, may be made valid, after the marriage is dissolved, either by express or implied assent.

ART. 1780.—A married woman may act as mandatary, and her acts will bind the mandator and the person with whom she contracts in her name; although she be not authorized by her husband, but the mandator has no action against her on the contract.

ART. 1781.—The contract, entered into by a person of insane mind, is void as to him for the want of that assent, which none but persons, in possession of their mental faculties, can give. It is not the judgment of interdiction, therefore, that creates the incapacity, it is evidence only of its existence, but it is conclusive evidence, and from these principles result the following rules:

1. That, after the interdiction, no other evidence than the interdiction itself is necessary to prove the incapacity of the person, and to invalidate any contract he may have made after the day the petition for interdiction was presented, and that no evidence to show that the act was made during a lucid interval, or to contradict the judgment of interdiction, can be admitted;

2. As to contracts, made prior to the application for the interdiction, they can only be invalidated by proving the incapacity to have existed at the time the contracts were made;

3. But in order to prevent imposition, it is not enough to make the proof mentioned in the last rule; it must also, in that case, be shown that the person interdicted was known by those who generally saw and conversed with him, to be in a state of mental derangement, or that the person, who contracted with him, from that or other circumstances, was acquainted with his incapacity;

4 L. 114.

4. That, except in the case of death hereafter provided for, no suit can be brought, nor any exception made, to invalidate a contract on account of insanity, unless judgment of interdiction be pronounced before bringing the suit, or at least applied for before making the exception;

5. That if the party die within thirty days after making the act or contract, the insanity may be shown by evidence, without having applied for the interdiction; but if more than that time elapse, the insanity cannot be shown to invalidate the act or contract, unless the interdiction shall have been applied for, except in the case provided for in the following rule;

6. That if an instrument or other act of a person deceased shall contain in itself evidence of insanity in the party, then it shall be declared void, although more than thirty days have elapsed between the time of making the act and the death of the party, and although no petition shall have been presented for his interdiction;

6 A. 104.

7. In the case mentioned in the preceding rule, other proofs of insanity may be offered by the party, who alleges the incapacity, or may be required by the judge;

8. That, where insanity is alleged to avoid a donation or other gratuitous contract, it is not necessary to show that the incapacity was generally known; it will be sufficient to show that it existed, and if the party be dead, without having been interdicted, it is not necessary in this case to show that the interdiction was applied for;

9. That evidence of general and habitual insanity in order to avoid a contract, may be rebutted by showing that the contract or act was made during a lucid interval; but where general insanity, even with some intervals, is shown, the burden of showing that the particular act in dispute was made during such an interval, is thrown on the party, who supports the validity of the act or contract;

4 L. 114.

10. That insanity may be alleged and proved to invalidate a testament, although no interdiction have been applied for, nor in that case is it necessary to prove that the insanity was notorious;

6 A. 104.

11. The allegation in a testament that the testator was of sound mind, cannot prevent proof of the contrary being given in evidence, even by the witnesses to the will;

12. That, when these rules refer to the time of presenting the petition for interdiction, as a period which is to determine the validity of a contract or other act, such petition is meant as has not been withdrawn or dismissed;

13. That, while the judgment of interdiction is in force, it is conclusive evidence of incapacity; but that it may be annulled, whenever the insanity ceases, but it can only be annulled by a judgment.

4 L. 114.

ART. 1782.—A temporary derangement of intellect, whether arising from disease, accident or other cause, also creates an incapacity pending its duration, provided the situation of the party and his incapacity was apparent.

ART. 1783.—The only case, in which slaves can contract on their account, is for their emancipation. They may contract for their masters, when authorized by them.

3 A. 136.

ART. 1784.—Besides the general incapacity, which persons of certain descriptions are under, there are others applicable only to certain contracts, either in relation to the parties, such as a husband and wife, tutor and ward, whose contracts with each other are forbidden; or in relation to the subject of the contract, such as purchases, by the administrator of any part of the estate which is committed to his charge, and the incapacity of the wife, even with the assent of the husband, to alienate her dotal property, or to become security for his debts. These take place only in the cases specially provided by law, under different titles of this code.

See Amendment to Art. 1139; 9 L. 585; 14 L. 111, 122; 1 R. 220; 12 R. 82; 1 A. 129, 301; 3 A. 533; 6 A. 455; See 2412.

ART. 1785.—The persons who have treated with a minor, the person interdicted, or of insane mind, or with a married woman, cannot plead the nullity of the agreement, if it is sought to be enforced by the party, when the disability shall cease, or by those who legally administer the rights of such person during the disability. Even a contract made with a slave may be enforced by the master, if he chooses to affirm it for his benefit.

6 L. 231; 10 L. 596; 19 L. 441.

ART. 1786.—If the contract be reciprocal, it must not be enforced on one side only; and if the minor, or other incapacitated person, opposes his incapacity against any part of the agreement, the whole of the contract is void.

Sec 4 L. 463.

ART. 1787.—If, in a contract with an incapacitated person, or in a contract void for want of form, entered into with any one for the benefit of such incapacitated person, any consideration be paid or given, and the contract be afterwards invalidated on account of such incapacity or want of form, the consideration so paid or given must be restored, if it was applied to the necessary use or benefit of the incapacitated person.

4 L. 305; 6 L. 215.

ART. 1788.—A person, who, being ignorant of the incapacity of one unable to contract, shall make an agreement with such person, may, immediately after he has discovered the incapacity, call on the party, if the incapacity has ceased, or on the person having the legal administration of his affairs, if it have not, to confirm or annul the contract; and if it be a contract of such kind, as the administrator might have made, then his assent shall confirm it, or his dissent shall free the contracting party from the obligation on his part. If the assent of a family meeting would have been necessary to authorize the contract, it may be called, on the application of the party, and their decision shall have the same effect in confirming or invalidating the contract, that it would have had on its formation.

6 L. 215; 2 A. 727; 4 A. 85.

ART. 1789.—If a contract, made by a person incapacitated from contracting, shall be confirmed by him after his incapacity shall cease, the rights of third persons acquired before such confirmation are not impaired thereby, even if such rights were acquired with notice of the invalid act.

7 N. S. 374; 11 R. 98; 12 R. 221.

ART. 1790.—Those who may be interdicted from the enjoyment of their civil rights, in consequence of a conviction for crime, cannot oppose their incapacity against the performance of any contract they may have made, unless it be against some person having power over them during their confinement, nor can any person with whom they contract, plead such incapacity.

SECTION II.—*Of the Consent necessary to give Validity to a Contract*

§ 1. *Of the Nature of the Assent, and how it is to be shown.*

ART. 1791.—When the parties have the legal capacity to form a contract, the next requisite to its validity is their consent. This being a mere operation of the mind, can have no effect, unless it be evinced in some manner that shall cause it to be understood by the other parties to the contract. To prevent error in this essential point, the law establishes, by certain rules adapted to the nature of the contract, what circumstances shall be evidence of such assent, and how those circum-

stances shall be proved : these come within the purview of the law of evidence.

1 N. S. 420; 11 L. 99; See 7 L. 233.

ART. 1792.—As there must be two parties at least to every contract, so there must be something proposed by one, and accepted and agreed to by another, to form the matter of such contract, the will of both parties must unite on the same point.

ART. 1793.—It is a presumption of law that, in every contract, each party has agreed to confer on the other the right of judicially enforcing the performance of the agreement, unless the contrary be expressed, or may be implied.

ART. 1794.—The contract consisting of a proposition and the consent to it, the agreement is incomplete, until the acceptance of the person to whom it is proposed. If he who proposes, should before that assent is given, change his intention on the subject, the concurrence of the two wills is wanting, and there is no contract.

1 L. 185; 5 A. 124.

ART. 1795.—The party proposing shall be presumed to continue in the intention, which his proposal expressed, if, on receiving the unqualified assent of him to whom the proposition is made, he do not signify the change of his intention.

2 L. 504.

ART. 1796.—He is bound by his proposition, and the signification of his dissent will be of no avail, if the proposition be made in terms which evince a design to give the other party the right of concluding the contract by his assent; and if that assent be given within such time as the situation of the parties and the nature of the contract shall prove that it was the intention of the proposer to allow.

2 L. 504; 3 A. 523; 5 A. 124.

ART. 1797.—But when one party proposes, and the other assents, then the obligation is complete, and by virtue of the right each has impliedly given to the other, either of them may call for the aid of the law to enforce it.

ART. 1798.—The acceptance needs not be made by the same act, or in point of time, immediately after the proposition, if made at any time before the person who offers or promises has changed his mind, or may reasonably be presumed to have done so, it is sufficient.

3 A. 523.

ART. 1799.—The acceptance to form a contract must be in all things conformable to the offer; any condition or limitation contained in the acceptance of that which formed the matter of the offer, gives him who makes the offer, the right to withdraw it.

1 L. 138, 190; 6 R. 97.

ART. 1800.—This takes place even when more is promised than was demanded, or when less is offered than was required; for example, if a request is made to borrow fifty dollars, and the party answers that he will lend one hundred dollars; or, if the request be to borrow one hundred dollars, and the answer that fifty will be lent, there is no obligation in either case without a further assent of the borrower to take the one hundred, in the first case, and the fifty in the other; for the propo-

sal to borrow fifty does not necessarily imply an assent to borrow one hundred, nor does the proposal to lend one hundred necessarily imply a desire to lend only fifty. The modification or change of the proposition is, in all respects, considered as a new offer, and the party making it is bound by the acceptance in the same manner as if the original proposition had been made by him.

ART. 1801.—When, however, from the circumstances of the case the offer necessarily implies an assent to the modification of the acceptance, then the obligation is complete, although there be a difference in terms between the one and the other. If, for example, one offers to sell a certain article for one hundred dollars, and the other, not having yet received the offer, should on his part propose to give two hundred dollars, the proposal to give the greater sum necessarily implies an assent to take it for a less, and the contract is complete at the lowest sum.

ART. 1802.—But a consent to give any thing else, although of a greater value than that contained in the offer, or to give the same or a larger sum at a different term of payment, does not imply an assent to the offer, and there is in that case no obligation.

ART. 1803.—The obligation of a contract not being complete, until the acceptance, or in cases where it is implied by law, until the circumstances which raise such implication are known to the party proposing; he may therefore revoke his offer or proposition before such acceptance, but not without allowing such reasonable time as from the terms of his offer he has given or from the circumstances of the case he may be supposed to have intended to give to the party, to communicate his determination.

5 A. 124.

ART. 1804.—If the party, making the offer, die before it is accepted, or he to whom it is made, die before he has given his assent, the representatives of neither party are bound, nor can they bind the survivor. But if the contract be accepted before the death of the party offering it, although he had no notice of it, the obligation is complete; but if the representatives assent to an acceptance of the surviving party in the first instance, or the survivor assent to an acceptance made by the representatives in the second instance, then it becomes a new contract between the representatives and the surviving party.

11 R. 298.

ART. 1805.—The proposition as well as the assent to a contract may be express or implied;

Express, when evinced by words, either written or spoken;

19 L. 425; 5 R. 250; 1 A. 259; 3 A. 468, 523;

Implied, when it is manifested by actions, even by silence or by inaction, in cases in which they can from circumstances be supposed to mean, or by legal presumption are directed to be considered as evidence of an assent.

11 L. 286, 288; 19 L. 427; See 17 L. 396; See 1810, 1811.

ART. 1806.—Express consent must be given in a language under-

stood by the party who accepts, and the words by which it is conveyed must be in themselves unequivocal : if they mean different things, they give rise to error, which, as is hereinafter provided, destroys the effect of a contract.

ART. 1807.—Even when words are unequivocal and expressive of assent, they are not always obligatory, when from the context, if in writing, or from what in speech is equivalent to it, the words which immediately precede, or follow, it appears that the party did not intend to obligate himself.

ART. 1808.—Unequivocal words, expressive of mere intent, do not make an obligation.

9 L. 144.

ART. 1809.—A positive promise, that, from the manner in which it is made, shows that there was no serious intent to contract, creates no obligation.

ART. 1810.—Actions without words, either written or spoken, are presumptive evidence of a contract, when they are done under circumstances that naturally imply a consent to such contract. To receive goods from a merchant without any express promise, and to use them, implies a contract to pay the value. If an offer is made of an article in deposit, and the article is received, the contract of deposit is complete. If a mandate is acted on, the mandatary is bound in the same manner as if he had accepted in writing. In all those cases and others of the like nature, all the conditions, which he, who gives or proposes, annexed to the delivery or the acceptance of the proposition, are also presumed to have been accepted by the act of receiving. If the merchant, in delivering the goods, declare that they must be paid for by a certain time, if the depositor designate how the deposit is to be kept, or the mandatary in what manner his commission is to be executed, he who receives and acts is obligated to the performance of all these conditions.

1 A. 11, 197; 3 A. 101.

ART. 1811.—Silence and inaction are also, under some circumstances, the means of showing an assent that creates an obligation ; if, after the termination of a lease, the lessee continue in possession, and the lessor be inactive and silent, a complete mutual obligation for continuing the lease, is created by the act of occupancy of the tenant on the one side, and the inaction and silence of the lessor on the other.

18 L. 517; 1 A. 11; 3 A. 463; See 2 L. 149; 4 L. 195, 542; 17 L. 359, 397.

ART. 1812.—Where the law does not create a legal presumption of proposition, acceptance or consent from certain facts, then, as in the case of other simple presumptions, it must be left to the discretion of the judge, whether assent is to be implied from them or not.

1 A. 11.

§ 2.—*What defects of Consent will invalidate a Contract.*

ART. 1813.—Consent being the concurrence of intention in two or more persons, with regard to a matter understood by all, reciprocally communicated, and resulting in each party from a free and deliberate

exercise of the will, it follows that there is no consent, not only where the intent has not been mutually communicated or implied, as is provided in the preceding paragraph, but also where it has been produced by

Error;
Fraud;
Violence;
Threats.

10 R. 65; See 19 L. 362.

§ 3.—*Of Error, its Division and Effects.*

ART. 1814.—Error, as applied to contracts, is of two kinds :

1. Error of fact;
2. Error of law.

See 6 L. 511.

ART. 1815.—That is called error of fact, which proceeds either from ignorance of that which really exists, or from a mistaken belief in the existence of that which has none.

13 L. 249; 4 R. 290; See 7 L. 554.

ART. 1816.—He is under an error of law, who is truly informed of the existence of facts, but who draws from them erroneous conclusions of law.

ART. 1817.—Errors may exist as to all the circumstances and facts which relate to a contract, but it is not every error that will invalidate it. To have that effect, the error must be in some point, which was a principal cause for making the contract, and it may be either as to the motive for making the contract, to the person with whom it is made, or to the subject matter of the contract itself.

§ 4.—*Of Error in the Motive.*

ART. 1818.—The reality of the cause is a kind of precedent condition to the contract, without which the consent would not have been given, because the motive being that which determines the will, if there be no such cause where one was supposed to exist, or if it be falsely represented, there can be no valid consent.

4 L. 352; 5 L. 114; 19 L. 140; 10 R. 65; See 4 L. 347.

ART. 1819.—The error in the cause of a contract to have the effect of invalidating it, must be on the principal cause, when there are several; this principal cause is called the *motive*, and means that consideration without which the contract would not have been made.

17 L. 445.

ART. 1820.—No error in the motive can invalidate a contract, unless the other party was apprised that it was the principal cause of the agreement, or unless from the nature of the transaction it must be presumed that he knew it.

15 L. 221; 17 L. 445.

ART. 1821.—But wherever the motive is apparent, although not made an express condition, if the error bears on that motive, the contract is void. A promise to give a certain sum to bear the expenses of a mar

riage, which the party supposes to have taken place, is not obligatory, if there be no marriage.

ART. 1822.—Thus, too, if a suit be brought on an obligation purporting to have been made by the ancestor of the defendant, and, supposing it to be true, the defendant enters into a compromise or promise to pay, the compromise or promise is void, if it should be afterwards discovered that the obligation was forged.

ART. 1823.—In the same manner a compromise of a suit, and any obligation made in consequence of it, is void, if, at the time, but unknown to the parties, the suit be finally decided. But if the decision be not final, but subject to appeal or revision, the compromise is valid.

ART. 1824.—A compromise also is void, where one of the parties is ignorant of the existence of a paper, which, being afterwards discovered, shows that the other had no right, and this, whether the other party knew the existence of the paper or not.

ART. 1825.—But if the compromise be of all differences generally, and there were other subjects of dispute, besides that in which the error existed, of sufficient importance to raise a presumption that, even if the error had been discovered, the compromise would still have been made, then such error shall not invalidate the contract.

9 L. 141.

ART. 1826.—In all cases, however, when the information, which would have destroyed the error, has been withheld by the other party to the contract, it comes under the head of fraud, and invalidates the contract.

See 15 L. 289.

ART. 1827.—Error in the motive also is shown in the case either of an insurance on property or an annuity on lives. If the property be lost, or the life be at an end, at the time of making the contract, there is no obligation, unless, in the case of the insurance, it be expressly stipulated that the insurer takes the risk of those events, from a period prior to the contract. If the same express stipulation take place in the case of the annuity, it then becomes an insurance, and is valid for the same reason.

5 L. 114.

§ 5.—*Error as to the Person.*

ART. 1828.—Error as to the person with whom the contract is made, will invalidate it if the consideration of the person is the principal or only cause of the contract, as it is always in the contract of marriage.

ART. 1829.—In contracts of beneficence, the consideration of the person is presumed by law to be the principal cause.

ART. 1830.—In onerous contracts, such as sale, exchange, loan for interest, letting and hiring, the consideration of the person is by law generally presumed to be an incidental cause, not a motive for a contract.

ART. 1831.—There are exceptions to the rule contained in the last preceding article.

If, from the nature of the onerous contract, it results that any particular skill or quality be required in its execution, which the party with

whom the contract is made, is supposed to possess, then the consideration of the person is presumed to be the principal cause, and error as to the person invalidates the contract. Thus, if intending to employ an architect of great eminence, the party addresses himself by mistake to one of the same name, who has little or no skill, the promise made to him for compensation is void; but if any thing be done by the person thus employed, who was ignorant of the mistake, a compensation, proportioned to his service, is due.

ART. 1832.—Error as to the quality or character in which the party acts, as well as a mistake as to the person himself, invalidates a contract, when such a quality or character is the principal cause of the agreement. Thus, a compromise with one who is supposed to be the heir of a deceased creditor of the party contracting, is void, if he be not really the heir.

4 L. 456.

ART. 1833.—But if the person who is really entitled to the quality assumed by the one with whom the contract is made, has contributed to the error by his neglect or by design, it will not vitiate the agreement. And in the case above stated, a payment to, or a compromise with one, whom the true heir suffered to remain in possession of the inheritance, and to act as heir, without notice, would be valid.

ART. 1834.—Contracts which could only be made by persons possessing certain powers, either delegated by contract, given by virtue of any private or public office, or vested by the operation of law, are also void, when there is error as to the character, quality or office, under color of which such contract was made. Contracts entered into under forged or void powers or assignments, or with persons without authority assuming to act as public or private officers, are governed by this rule. Contracts, however, made in the name of another, under void powers, will be valid if ratified by the principal, before the other contracting party has signified his dissent to the agreement.

§ 6.—*Of Error as to the Nature and Object of the Contract.*

ART. 1835.—Error as to the nature of the contract will render it void.

The nature of the contract is that which characterizes the obligation which it creates. Thus, if the party receives property, and from error or ambiguity in the words accompanying the delivery, believes that he has purchased, while he who delivers intends only to pledge, there is no contract.

4 L. 352; See 4 L. 347; 6 L. 500.

ART. 1836.—Error as to the thing which is the subject of the contract, does not invalidate it, unless it bears on the substance or some substantial quality of the thing.

See 1 A. 232.

ART. 1837.—There is error as to the substance, when the object is of a totally different nature from that which is intended. Thus, if the object of the stipulation be supposed by one or both the parties to be an

ingot of silver, and it really is a mass of some other metal that resembles silver, there is an error bearing on the substance of the object.

See 1 A. 232.

ART. 1838.—The error bears on the substantial quality of the object when such quality is that which gives it its greatest value. A contract relative to a vase, supposed to be of gold, is void if it be only plated with that metal.

4 L. 352.

ART. 1839.—Error as to the other qualities of the object of the contract, only invalidates it, when those qualities are such as were the principal cause of making the contract.

§ 7.—*Errors of Law.*

ART. 1840.—Error in law, as well as error in fact, invalidates a contract, where such error is its only or principal cause, subject to the following modifications and restrictions :

1. Although the party may have been ignorant of his right, yet if the contract, made under such error, fulfilled any such natural obligation as might from its nature induce a presumption that it was made in consequence of the obligation, and not from error of right, then such error shall not be alleged to avoid the contract. Thus, the natural obligation to perform the will of the donor, prevents the donee from reclaiming legacies or gifts he has paid under a testament void only for want of form ;

4 L. 456, 460.

2. A contract, made for the purpose of avoiding litigation, cannot be rescinded for error of law ;

4 R. 207 ; See 5 L. 113 ; 7 L. 554 ; 19 L. 100.

3. Error of law can never be alleged as the means of acquiring, though it may be invoked as the means of preventing a loss or of recovering what has been given or paid under such error. The error, under which a possessor may be as to the illegality of his title, shall not give him a right to prescribe under it ;

4. A judicial confession of a debt shall not be avoided by an allegation of error of law, though it may be by showing an error of fact ;

5. A promise or contract, that destroys a prescriptive right, shall not be avoided by an allegation that the party was ignorant or in an error with regard to the law of prescription ;

6. If a party has an exception, that destroys the natural as well as the perfect obligation, and, through error of law, makes a promise or contract that destroys such exception, he may avail himself of such error ; but if the exception destroys only the perfect, but not the natural obligation, error of law shall not avail to restore the exception.

§ 8.—*Of the Nullity resulting from Fraud.*

ART. 1841.—Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantages to the one party, or to cause an inconvenience or loss to the other. From which definition are drawn the following rules :

1. Error is an essential part of the definition ; an artifice that cannot deceive, can have no effect in influencing the consent, and cannot injure the validity of the contract ;

2. The error must be on a material part of the contract, that is to say, such part as may reasonably be presumed to have influenced the party in making it ; but it needs not be the principal cause of the contract, as it must be in the case of simple error without artifice ;

3. A false assertion as to the value of that which is the object of the contract, is not such an artifice as will invalidate the agreement, provided the object is of such a nature and is in such a situation that he, who is induced to contract by means of the assertion, might with ordinary attention have detected the falsehood ; he shall then be supposed to have been influenced more by his own judgment than the assertion of the other ;

4. But a false assertion of the value or cost, or quality of the object, will constitute such artifice, if the object be one that requires particular skill or habit, or any difficult or inconvenient operation to discover the truth or falsity of the assertion. Sales of articles, falsely asserted to be composed of precious metals, sales of merchandise by a false invoice, of any article by a false sample, of goods in packages or bales, which cannot without inconvenience be unpacked or inspected, or where the party making the sale avoids the inspection with intent to deceive, of goods at sea or at a distance, of slaves with a false assertion of their qualities, or a concealment of their vices or defects, are, with others of like nature, referable to this rule ;

5. It must be caused or continued by artifice, by which is meant either an assertion of what is false, or a suppression of what is true, in relation to such part of the contract as is stated in the second rule ;

6. The assertion and suppression, mentioned in the last preceding rule, mean not only an affirmation or negation by words either written or spoken, but any other means calculated to produce a belief of what is false, or an ignorance or disbelief of what is true ;

7. The artifice must be designed to obtain either an unjust advantage to the party for whose benefit the artifice is carried on, or a loss or inconvenience to him against whom it is practised, although attended with advantage to no one ;

8. It is not necessary that either of the effects mentioned in the last preceding rule, should have actually been produced ; it is sufficient to

constitute the fraud, that such would be the effect of the contract, if it were actually performed ;

9. If the artifice be practised by a party to the contract, or by another with his knowledge or by his procurement, it vitiates the contract; but if the artifice be practised by a third person, without the knowledge of the party who benefits by it, the contract is not vitiated by the fraud, although it may be void on account of error, if that error be of such a nature as to invalidate it ; in this case the party injured may recover his damages against the person practising the fraud ;

10. In the words "loss or inconvenience" which may be suffered by the party, is included the preventing him from obtaining any gain or advantage, which, without the artifice, he might have obtained ;

11. If the advantage to be gained by the party, in favor of whom the artifice is practised, gives him no unjust advantage, that is to say, no advantage at the expense of the other party, and this latter would neither suffer inconvenience nor loss in consequence of the deception, if the contract were performed, the artifice does not vitiate it.

12. Combinations with respect to sales to enhance the price by false bids or offers, or to depress it by false assertions, are artifices, which invalidate the contract, when practised by those who are parties to it, or give rise to an action for damages where they are not.

6 L. 500; 9 L. 129; 4 R. 290; 1 A. 389; 6 A. 385; See 9 L. 17; 11 L. 401; 13 L. 204, 534; 15 L. 218; 9 R. 486.

ART. 1842.—Fraud, like every other allegation, must be proved by him who alleges it, but it may be proved by simple presumptions, by legal presumptions, as well as by other evidence. The maxim that fraud is not to be presumed, means no more than that it is not to be imputed without legal evidence.

12 R. 284; 2 A. 458; 3 A. 600; See 1 N. S. 451; 2 L. 78; 6 L. 500; 16 L. 363.

ART. 1843.—Some circumstances and acts attending particular contracts, are by law declared to be conclusive; and others, presumptive evidence of fraud. These laws will be found in the proper divisions of this code, treating of these contracts.

§ 9.—*Of the Want of Consent arising from Violence or Threats.*

ART. 1844.—Consent to a contract is void, if it be produced by violence or threats, and the contract is invalid.

See 12 R. 378.

ART. 1845.—It is not every degree of violence or every kind of threats, that will invalidate a contract; they must be such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune. The age, sex, state of health, temper and disposition of the party, and other circumstances calculated

to give greater or less effect to the violence or threats, must be taken into consideration.

See 12 R. 373.

ART. 1846.—A contract, produced by violence or threats, is void, although the party, in whose favor the contract is made, did not exercise the violence or make the threats, and although he were ignorant of them.

ART. 1847.—Violence or threats are causes of nullity, not only where they are exercised on the contracting party, but also when the wife, the husband, the descendants or ascendants of the party are the object of them.

ART. 1848.—The mere reverential fear of a relation in the ascending line, where no violence has been offered, nor threats made, will not invalidate a contract.

ART. 1849.—No contract can be invalidated on an allegation of violence or threats, if it has been approved, either expressly after the violence or danger has ceased, or tacitly by suffering the time limited to elapse without causing it to be rescinded.

17 L. 289, 293.

ART. 1850.—If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract. A just and legal imprisonment, or threats of any measure authorized by law and by the circumstances of the case, are of this description.

See 10 M. 196.

ART. 1851.—But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it. An arrest without cause of action, or a demand of bail in an unreasonable sum, or threats of such proceeding, by this rule invalidate a contract made under their pressure.

ART. 1852.—A contract made with one having no agency in the violence used, or the threats made for the purpose of delivering the party from the constraint under which he is, or from the danger with which he is menaced, shall not be invalidated by reason of such violence or threats, provided the contract be made in good faith and without collusion with the offending party. A contract to procure a rescue of person or goods from pirates or robbers, is an example of this rule.

ART. 1853.—All the above articles relate to cases where there may be some other motive besides the violence or threats for making the contract. Where, however, there is no other cause for the contract, any threats, even of slight injury, will invalidate it.

12 R. 373.

§ 10.—Of *Lesion*.

ART. 1854.—*Lesion* is the injury suffered by one, who does not receive a full equivalent for what he gives in a commutative contract. The

remedy given for this injury, is founded on its being the effect of implied error or imposition; for, in every commutative contract, equivalents are supposed to be given and received.

10 L. 423; See 2 N. S. 73; 5 L. 382; 10 L. 421; 16 L. 380; 4 R. 45.

ART. 1855.—The law, however, will not release a person of full age, and who is under no incapacity, against the effect of his voluntary contracts, on account of such implied error or imposition, except in the two following cases:

1. In partition, where there is a difference in the value of the portions to more than the amount of one-fourth to the prejudice of one of the parties;

2. In sales of immovable property, the vendor may be relieved, if the price given is less than one-half of the value of the thing sold; but the sale cannot be invalidated for lesion to the injury of the purchaser.

ART. 1856.—Lesion can be alleged by persons of full age in no other sale than one-for immovables, by which is meant whatever is immovable by destination, including slaves, when sold with the plantations on which they labor.

ART. 1857.—Persons of full age are relieved for lesion in no other contracts than those above expressed, not even in exchange, which bears some resemblance to the contract of sale.

ART. 1858.—Minors, not emancipated, are relieviable against simple lesion in every species of contract. That is called simple lesion, in which the amount to be suffered by it, is not designated by law, as it is in the cases above mentioned of partition and sale between persons of full age.

ART. 1859.—As to such contracts as they are, by virtue of their emancipation, authorized to make, they are entitled to no other relief against lesion than if they were of full age. As to all other contracts, which they can make only under certain formalities, they are in the same situation with other minors, and may have relief for simple lesion, or prosecute the action of nullity against the contract.

ART. 1860.—Lesion needs not be alleged to invalidate such contracts as are made by minors, either without the intervention of their tutors or curators, or with such intervention, but unattended by the forms prescribed by law. Such contracts, being void by law, may be declared so, either in a suit for nullity or on exception, without any other proof than that of the minority of the party and the want of formality in the act.

ART. 1861.—But in contracts made with minors, when duly authorized, and when all the forms of law have been pursued, on alleging and proving even simple lesion, they will be relieved with the exception of the cases provided for in the next two articles.

See 4 L. 370.

ART. 1862.—When all the formalities required by law for the alienation or the partition of the property of minors, or persons interdicted, have been fulfilled, the acts made for those purposes shall have the same force, as if they had been executed by persons of full age and sound mind.

ART. 1863.—No lesion whatever, even in the case of minors, can invalidate judicial sales, or sales of insolvent's property made by syndics or other trustees. Sales, directed or authorized by courts of probates, are judicial sales under this provision.

13 L. 436.

ART. 1864.—When lesion is alleged to invalidate a partition or sale, the party alleging it must first prove the value of the property sold, in the state in which it was at the time of the contract, according to the usual terms of credit given on sales of property of that description. He must then show how much the price given was less than such value; but if the price given was paid at longer periods than those usually given on such sales, the interest for the time exceeding such usual credit must be deducted from such price; or, if the price was paid in shorter periods than those of such usual credit, then the interest for the time such payment has fallen short of the usual credit, shall be added to the price actually paid, and from a comparison of the price after these additions or deductions with the estimated value, the court shall determine whether, according to law applied to the circumstances of the case, there is a lesion sufficient to invalidate the contract.

6 L. 762.

ART. 1865.—In all questions of lesion the value of that which was the subject of the contract at the time of making it, is the rule by which the lesion is to be ascertained. Even in the case of minors, changes in value by subsequent events are not to affect the contract.

ART. 1866.—If a minor should, at the time of the contract, declare himself of full age, it will be no bar to his obtaining relief against lesion.

ART. 1867.—A minor, who is a banker, factor, trader or artisan, is not relievabale against lesion in contracts made for the purpose of his trade or business, nor is he relievabale against lesion in any of the stipulations of his marriage contract, if such contract be made with the consent and pursuant to the formalities in such case provided by law.

15 L. 14; 2 R. 513; 2 A. 398.

ART. 1868.—He is not relievabale against obligations resulting from offences or quasi offences.

ART. 1869.—A ratification made by a person of full age of any contract made during his minority, cures all defects arising as well from the want of the necessary formalities as from the want of a proper consideration. No action for nullity or lesion can be brought after such ratification.

6 R. 429; 2 A. 367.

ART. 1870.—Actions for lesion are limited to four years, to date from the time of the contract between the persons of full age, and from the age of majority in contracts of minors.

3 A. 533.

ART. 1871.—In actions, brought for relief against a sale or partition made between persons of full age, or in a like action, brought for lesion only, in a sale made by a minor or on his account, the purchaser may elect either to rescind the sale, or to have it confirmed on paying the full value. But this election must be made within a period to be designated in an interlocutory decree, determining the true value and the terms on which the payment is to be made.

3 A. 569.

ART. 1872.—If the purchaser elect to rescind the sale, he must restore the property with all the profits received, or which he might have received from the property from the time of bringing the suit; and the seller shall repay the purchase money, which he has received, with interest from the same time, give up and cancel the securities given for such part, if any, as remains unpaid; and moreover pay for such improvements made by the purchaser as add a permanent value to the property, according to their value at the time of the rescission of the sale.

6 L. 762.

ART. 1873.—The purchaser, on his part, in case of rescission, is accountable for all injuries and dilapidations arising from his neglect or fault.

ART. 1874.—The judge, in pronouncing the final decree, shall make compensation between the parties of their respective demands, and determine what balance shall be paid, and by which of the parties, according to the principles stated in the preceding articles.

§ 11.—*General Provisions applicable to Error, Violence and Fraud in Contracts.*

ART. 1875.—Engagements made through error, violence, fraud or menace, are not absolutely null, but are voidable by the parties who have contracted under the influence of such error, fraud, violence or menace, or by the representatives of such parties.

See 7 L. 493.

ART. 1876.—They may be avoided either by exception to suits brought on such contracts, or by an action brought for that purpose.

SECTION III.—*Of the Object and Matter of Contracts.*

ART. 1877.—Every contract has for its object something which one or both of the parties oblige themselves to give, or to do, or not to do.

See 7 L. 493.

ART. 1878.—The mere use or the mere possession of a thing, may be, as well as the thing itself, the object of a contract.

ART. 1879.—All things, in the most extensive sense of the expression, corporeal or incorporeal, movable or immovable, to which rights can legally be acquired, may become the object of contracts.

See 17 L. 447.

ART. 1880.—An obligation must have for its object, something determinate, at least as to its species.

The quantity of a thing may be uncertain, provided it be capable of being ascertained.

ART. 1881.—Future things may be the object of an obligation.

One cannot, however, renounce the succession of an estate not yet devolved, nor can any stipulation be made with regard to such a succession, even with the consent of him whose succession is in question.

ART. 1882.—Yet a future succession may become the object of a marriage contract; it may be stipulated that such succession shall be dotal or paraphernal, that it should be vested in real estate, or other covenants of the like nature, for the benefit of one of the parties or their children.

ART. 1883.—No one can, by a contract in his own name, bind any one but himself or his representatives; but he may contract in his own name, that another shall ratify or perform the stipulation which he makes, and in this case he shall be liable in damages, if the contract be not ratified or performed by the person for whose act he stipulates.

See 11 L. 286.

ART. 1884.—A person may also, in his own name, make some advantage for a third person the condition or consideration of a commutative contract, or onerous donation; and if such third person consents to avail himself of the advantage stipulated in his favor, the contract cannot be revoked.

2 N. S. 672; 3 N. S. 607; 4 N. S. 527; 6 N. S. 152; 5 L. 316; 9 R. 19; 1 A. 280, 372; 2 A. 940; 3 A. 129; 5 A. 225.

ART. 1885.—The object of a contract must be possible, by which is meant physically or morally possible. The possibility must be determined, not by the means or ability of the party, but by the nature of things.

3 A. 203; 4 A. 145; See 5 N. S. 409; 2 R. 163; See 1960.

ART. 1886.—That is considered as morally impossible which is forbidden by law or morals. All contracts having such an object are void.

3 A. 203; 4 A. 145, 519, 541; 5 A. 225, 693; See 1855, 1960.

SECTION IV.—*Of the Cause or Consideration of Contracts.*

ART. 1887.—An obligation without a cause, or with a false or unlawful cause, can have no effect.

3 N. S. 205; 6 N. S. 217; 1 L. 283; 5 R. 101; 1 A. 192; See 12 R. 302, 373; 1 A. 176.

ART. 1888.—An agreement is not the less valid, though the cause be not expressed.

5 L. 72, 73; 6 L. 217; 1 A. 192; 3 A. 230; See 10 L. 167; 1 A. 176.

ART. 1889.—The cause is illicit, when it is forbidden by law, when it is *contra bonos mores* (contrary to moral conduct) or to public order.

3 N. S. 205; 5 N. S. 409; 6 N. S. 217; 1 L. 238; See 2 R. 163; 12 R. 302.

ART. 1890.—By the cause of the contract in this section is meant the consideration or motive for making it, and a contract is said to be without a cause, whenever the party was in error, supposing that which was his inducement for contracting to exist, when in fact it had never existed, or had ceased to exist before the contract was made.

19 L. 140; See 2 R. 163; 12 R. 302.

ART. 1891.—The contract is also considered as being without cause when the consideration for making it was something which, in the contemplation of the parties, was thereafter expected to exist or take place, and which did not take place or exist. A gift in consideration of a future marriage is void by this rule, if the marriage do not take place.

ART. 1892.—Where the consideration or cause of the contract really exists at the time of making it, but afterwards fails, it will not affect the contract, if all that was intended by the parties be carried into effect at the time. The destruction of property sold, after the sale is perfected, without the fault of the seller, is a case governed by this rule.

ART. 1893.—But, if the contract consists of several successive obligations to be performed at different times, and the equivalent is not given in advance for the whole, but is either expressly or impliedly promised to be given at future periods; then, if the cause of the contract, corresponding to either of the successive obligations, should fail, the obligation depending on it will cease also. Thus, in leases for years, the obligation to pay the yearly rent ceases, if the property which is leased should be destroyed.

19 L. 140; See 14 L. 501.

ART. 1894.—If the cause expressed in the consideration should be one that does not exist, yet the contract cannot be invalidated if the party can show the existence of a true and sufficient consideration.

10 L. 164; 3 A. 230, 250.

CHAPTER III.

OF THE EFFECT OF OBLIGATIONS.

SECTION I.—*General Dispositions.*

ART. 1895.—Agreements, legally entered into, have the effect of laws on those who have formed them.

They cannot be revoked, unless by mutual consent of the parties, or for causes acknowledged by law.

They must be performed with good faith.

See 2 R. 163.

ART. 1896.—But a contract, in which any thing is stipulated for the benefit of a third person, who has signified his assent to accept it,

cannot be revoked as to the advantage stipulated in his favor, without his consent.

1 A. 372; 3 A. 129; 12 R. 152; See 1504.

ART. 1897.—The obligation of contracts extends not only to what is expressly stipulated, but also to every thing that, by law, equity, or custom, is considered as incidental to the particular contract, or necessary to carry it into effect.

3 L. 225, 228; 1 A. 419; 3 A. 600.

ART. 1898.—Contracts, as to their effects upon property or real rights, are of two kinds:

1. Such as purport a transfer of that which is the object of the contract;
2. Such as only give a temporary right to the enjoyment of it.

SECTION II.—*Of the Obligation of Giving.*

ART. 1899.—The term to give, in this division of obligations, is applied only to corporeal objects, that may be actually delivered from one to another; and it includes the payment of money as well as the delivery of any other article. A covenant, respecting an incorporeal right, comes under the definition of contracts to do or not to do, because some act, besides that of delivery, is necessary for the transfer of such rights.

ART. 1900.—A contract for the delivery of a promissory note payable to bearer, or payable to order, and already indorsed, or any other negotiable paper of the same nature, also indorsed, or transferable by delivery only, comes under the description of a contract to give; but a contract to transfer a note to order not indorsed, or any other debt that requires an act of transfer, is an obligation to do.

ART. 1901.—The obligation of giving includes that of delivering the thing, and of keeping it safe, until the delivery of it. The person who contracts to give, being liable, on failure, to pay damages to the person with whom he has contracted.

ART. 1902.—The obligation of carefully keeping the thing, whether the object of the contract be solely the utility of one of the parties, or whether its object be their common utility, subjects the person, who has the thing in his keeping, to take all the care of it that could be expected from a prudent administrator.

This obligation is more or less extended with regard to certain contracts, the effects of which, in this respect, are explained under their respective titles.

See 18 L. 553; 1 A. 344.

ART. 1903.—If the obligation be to deliver an object which is particularly specified, it is perfect by the mere consent of the parties. It renders the creditor the owner, and although it was not delivered to him, puts the thing at his risk from the date of the obligation, if the contract was one of those that purport a transfer.

2 A. 654, 746; See 1914.

ART. 1904.—But if the debtor of a thing is in default for not having made the delivery, it is at his risk from the time of his default.

6 L. 159; See 2 R. 313; 1 A. 409.

ART. 1905.—The debtor may be put in default in three different ways : by the terms of the contract, by the act of the creditor, or by the operation of law :

1 L. 269, 469 ; 5 L. 375 ; 3 A. 208, 444.

1. By the terms of the contract, when it specially provides that the party, failing to comply, shall be deemed to be in default by the mere act of his failure ;

5 L. 375 ; 6 R. 450.

2. By the act of the party, when at or after the time stipulated for the performance, he demands that it shall be carried into effect, which demand may be made, either by the commencement of a suit, by a demand in writing, by a protest made by a notary public, or by a verbal requisition made in the presence of two witnesses ;

5 L. 375 ; 9 L. 478 ; 17 L. 310, 341, 346 ; 18 L. 88 ; 9 R. 492 ; See 1 L. 269 ; 3 L. 99.

3. By the operation of law. This takes place in cases where the breach of the contract alone is by law declared to be equivalent to a default. The law having declared that the neglect to return a thing loaned for use, at the stipulated time, or the application of it to another use than the one for which it was lent, puts it at the risk of the borrower ; this without any act of the lender puts the borrower in default, and forms an example of this part of the rule.

1 A. 391 ; See 18 L. 91.

ART. 1906.—The effects of being put in default are not only that, in contracts to give the thing, which is the object of the stipulation, is at the risk of the person in default ; but in the cases hereinafter provided for, is a prerequisite to the recovery of damages and of profits and fruits, or to the rescission of the contract.

6 N. S. 230, 624 ; 1 L. 98 ; 7 L. 193 ; 13 L. 229 ; 17 L. 342 ; 18 L. 88 ; 2 R. 498 ; 3 R. 400 ; 6 R. 450 ; 9 R. 495 ; 10 R. 524 ; 1 A. 391 ; 3 A. 208.

ART. 1907.—In commutative contracts, where the reciprocal obligations are to be performed at the same time, or the one immediately after the other, the party, who wishes to put the other in default, must at the time and place expressed in, or implied by the agreement, offer or perform, as the contract requires, that which on his part was to be performed, or the opposite party will not be legally put in default.

3 L. 382 ; 5 L. 375 ; 6 L. 154 ; 13 L. 229, 449 ; 15 L. 297 ; 5 R. 83 ; 3 A. 274 ; 5 A. 577 ; See 1905.

ART. 1908.—Although the contract be, either not commutative, or, if commutative, the reciprocal obligations are not to be performed at the same time, yet the party wishing to put the other in default, must be himself ready, and must offer to receive the performance at the time and place stipulated in the contract or implied from the nature of the act to be done, and he cannot avail himself of any demand at any other time or place ; but if the obligation be to do or give any thing that may as well be given, or done at one time and place as at another, then the party failing may be put in default as well after, as at the time the obligation

becomes due. Promissory notes and bills of exchange are not governed by this rule, but by those of commercial law.

13 L. 229; 3 A. 464; See 1906.

ART. 1909.—But if the object, contracted to be given, be not a thing particularly specified, but is uncertain, indeterminate or described only by quantity or number, it is at the risk of the creditor only from the time he is in legal default for not receiving the thing after it has been tendered. A contract to deliver a certain number of bushels of wheat, to pay a certain sum of money, or to ship a certain number of hogsheads of sugar, without further identification, comes under this rule.

ART. 1910.—There is an exception to the rule established in the last preceding article; when the object of the contract, although indeterminate in itself, makes part of a whole that is determinate and certain, and the whole, of which it forms a part, is lost or destroyed by inevitable accident before delivery, the loss will fall on the creditor of the thing sold. A sale of ten bales, of the hundred bales of cotton in a particular store, is an example of this rule, and if all the cotton be destroyed by fire, the accident will discharge the seller from the obligation of delivering it.

ART. 1911.—In the case provided for by the last article, it must appear that the designation of the mass, from which the particular object of the contract is to be taken, was intended by the parties as restrictive, that is to say, that their intention was confined to that particular property, and no other of the same kind. Where such intent is not clearly expressed, it shall be presumed that no such restriction was intended; and the thing is at the risk of the debtor until delivery or default.

ART. 1912.—Although the contract contain an obligation to deliver, yet if it be one that does not purport a transfer of property, the thing is always at the risk of the obligor, provided there be no specific agreement to the contrary.

ART. 1913.—If the contract be complete, and be one that purports a transfer of property, its destruction before delivery or default does not exonerate the party who was to have received it, from the performance or delivery of that which on his part was intended as the price or equivalent for such property.

ART. 1914.—The rule, that the obligation to deliver a determinate object is perfect by the mere consent of the parties, and that the obligee is the owner from the time of such contract, is without any exception as respects immovables, not only between the parties, but as to all the world, provided the contract be clothed with the formalities required by law, that it is *bona fide*, and purports to transfer the property.

See 1903.

ART. 1915.—In cases, however, of contracts, which purport to transfer immovable property, if he who transfers it is suffered by the obligee

to remain in corporal possession for a longer time than is reasonably required to deliver the actual possession and to act as owner, to the injury of a third person, who may afterwards contract with him, or acquire rights upon his property as creditor, it will be considered as a mark of fraud, and will throw the burden of proving that the contract was made *bona fide* upon him to whom the property was transferred by the first contract, in any controversy with creditors of the obligor or persons acquiring *bona fide* intermediate rights by contract with him.

4 L. 340; 6 L. 538; 11 L. 276; 17 L. 359; 5 R. 18; 7 R. 434; 2 A. 266, 912; See 5 A. 1; See 2456.

ART. 1916.—With respect to personal effects, although, by the rule referred to in the two last preceding articles, the consent to transfer vests the property in the obligee, yet this effect is strictly confined to the parties until actual delivery of the object. If the vendor, being in possession, should, by a second contract, transfer the property to another person, who gets the possession before the first obligee, the last transferee is considered as the proprietor, provided the contract be made on his part *bona fide*, and without notice of the former contract.

3 M. 222, 269; 4 M. 25; 5 M. 32; 7 M. 24; 9 M. 403; 12 L. 375; 1 R. 26; 3 R. 331; 12 R. 51; 1 A. 59;
See 2243.

ART. 1917.—In like manner, if personal property be transferred by contract, but not delivered, it is liable in the hands of the obligor to seizure and attachment, in behalf of his creditors.

1 A. 59; 3 A. 462; See 2243, 2456.

ART. 1918.—What shall be considered a delivery of possession, is determined by the rules of law, applicable to the situation and nature of the property.

See 2243.

ART. 1919.—If the contract be one of those that do not purport to transfer property, but only to give a right to the temporary enjoyment of it, the right to that enjoyment vests by the mere consent of the parties, in the same manner and subject to the same rules as are above laid down for contracts which purport to transfer the property itself.

SECTION III.—*Of the Obligations to do or not to do.*

ART. 1920.—On the breach of any obligation to do, or not to do, the obligee is entitled either to damages, or, in cases which permit it, to a specific performance of the contract, at his option, or he may require the dissolution of the contract, and in all these cases damages may be given where they have accrued, according to the rules established in the following section.

8 R. 157.

ART. 1921.—In ordinary cases, the breach of such a contract entitles the party aggrieved only to damages, but where this would be an inade-

quate compensation, and the party has the power of performing the contract, he may be constrained to a specific performance by means prescribed in the laws which regulate the practice of the courts.

ART. 1922.—The obligee may require that any thing which has been done in violation of a contract, may be undone, if the nature of the case will permit, and that things be restored to the situation in which they were before the act complained of was done, and the court may order this to be effected by its officers, or authorize the injured party to do it himself at the expense of the other, and may also add damages, if the justice of the case require it.

ART. 1923.—If the obligation be not to do, the obligee may also demand that the obligor be restrained from doing any thing in contravention of it, in cases where he proves an attempt to do the act covenanted against.

SECTION IV.—*Of the Damages resulting from the Inexecution of Obligations.*

ART. 1924.—The obligations of contracts extending to whatsoever is incident to such contracts, the party, who violates them, is liable, as one of the incidents of his obligations, to the payment of the damages, which the other party has sustained by his default.

See 8 R. 227.

ART. 1925.—A contract may be violated, either actively by doing something inconsistent with the obligation it has proposed, or passively by not doing what was covenanted to be done, or not doing it at the time, or in the manner stipulated or implied from the nature of the contract.

See 6 R. 216; 8 R. 227; 9 R. 194; 12 R. 173.

ART. 1926.—When there is an active violation of the contract, damages are due from the moment the act of contravention has been done, and the creditor is under no obligation to put the debtor in default, in order to entitle him to his action.

3 L. 40; 1 R. 543.

ART. 1927.—When the breach has been passive only, damages are due from the time that the debtor has been put in default, in the manner directed in this chapter.

The rules contained in this and the preceding articles, however, are subject to the following exceptions and modifications:

6 N. S. 231; 2 L. 97; 5 L. 415; 3 A. 444.

1. When the thing to be given or done by the contract was of such a nature, that it could only be given or done within a certain time, which has elapsed, or under certain circumstances which no longer exist, the debtor need not be put in legal delay to entitle the creditor to damages;

2. Where, by a fortuitous event or irresistible force, the debtor is hindered from giving or doing what he has contracted to give or do, or is from the same causes compelled to do what the contract bound him

not to do, no damages can be recovered for the inexecution of the contract;

3. There are two exceptions to the last rule; first, when the party in default has by his contract expressly or implicitly undertaken the risk of the fortuitous event, or of the irresistible force; secondly, if the fortuitous event, or case of force, was preceded by some fault of the debtor, without which the loss would not have happened;

4. Although the responsibility of the debtor for the object he was bound to deliver, is incurred from the moment he is put in default, yet if it is lost by some fortuitous event or irresistible force, by which it would also have been lost, had it been in the hands of the creditor, the debtor is not answerable for the value, but only for the delay.

2 A. 272.

ART. 1928.—Where the object of the contract is any thing but the payment of money, the damages due to the creditor for its breach are the amount of the loss he has sustained, and the profit of which he has been deprived, under the following exceptions and modifications:

3 L. 328; 13 L. 404; 3 A. 140, 149, 464, 548, 671; 6 A. 491.

1. When the debtor has been guilty of no fraud or bad faith, he is liable only for such damages as were contemplated, or may reasonably be supposed to have entered into the contemplation of the parties at the time of the contract. By bad faith in this and the next rule is not meant the mere breach of faith in not complying with the contract, but a designed breach of it from some motive of interest or ill will;

2. When the inexecution of the contract has proceeded from fraud or bad faith, the debtor shall not only be liable to such damages as were, or might have been foreseen at the time of making the contract, but also to such as are the immediate and direct consequence of the breach of that contract; but even when there is fraud, the damages cannot exceed this;

3 A. 140, 149; 4 A. 79.

3. Although the general rule is, that damages are the amount of the loss the creditor has sustained, or of the gain of which he has been deprived, yet there are cases in which damages may be assessed without calculating altogether on the pecuniary loss, or the privation of pecuniary gain to the party. Where the contract has for its object the gratification of some intellectual enjoyment, whether in religion, morality, or taste, or some convenience or other legal gratification, although these are not appreciated in money by the parties, yet damages are due for their breach: a contract for a religious or charitable foundation, a promise of marriage, or an engagement for a work of some of the fine arts, are objects and examples of this rule.

In the assessment of damages under this rule, as well as in cases of offences, quasi offences, and quasi contracts, much discretion must be

left to the judge or jury, while in other cases they have none, but are bound to give such damages under the above rules as will indemnify the creditors, whenever the contract has been broken by the fault, negligence, fraud or bad faith of the debtor;

16 L. 394; 5 R. 116; 8 R. 51; 9 R. 367; 12 R. 20; 5 A. 316; 4 A. 440; V. 2294.

4. If the creditor be guilty of any bad faith, which retards or prevents the execution of the contract, or if, at the time of making it, he knew of any facts that must prevent or delay its performance, and concealed them from the debtor, he is not entitled to damages;

3 A. 548.

5. Where the parties, by their contract, have determined the sum that shall be paid as damages for its breach, the creditor must recover that sum, but is not entitled to more. But when the contract is executed in part, the damages agreed on by the parties may be reduced to the loss really suffered, and the gain of which the party has been deprived, unless there has been an express agreement that the sum fixed by the contract shall be paid, even on a partial breach of the agreement.

5 A. 321; See 6 R. 216; 5 A. 618

ART. 1929.—The damages due for delay in the performance of an obligation to pay money, are called interest. The creditor is entitled to these damages without proving any loss, and whatever loss he may have suffered he can recover no more.

7 L. 192; 15 L. 371; 3 A. 548; 5 A. 618.

ART. 1930.—Interest is of two kinds, conventional and legal; the rate of both is fixed by law in the chapter on loans on interest.

1 A. 265.

ART. 1931.—In contracts stipulating a conventional interest, it is due without any demand, from the time stipulated for its commencement until the principal is paid.

7 L. 482, 565; 1 A. 265.

ART. 1932.—In contracts which do not stipulate for the payment of interest, it is due from the time the debtor is put in default for the payment of the principal, and is to be calculated on whatsoever sum shall be found by the judgment to have been due at the time of the default.

Stat. 9th March, 1852, p. 95.—All debts shall bear interest at the rate of five per cent. per annum from the time they become due, unless otherwise stipulated.

19 L. 431, 520; 8 R. 13; 1 A. 265; 2 A. 363; 3 A. 338.

ART. 1933.—When the sum is due for property yielding a revenue, interest is due from the time the principal is payable, without any demand.

1 A. 140.

ART. 1934.—Interest upon interest cannot be recovered, unless it be

added to the principal, and by another contract made a new debt. No stipulation to that effect in the original contract is valid.

3 L. 430; 2 A. 241; 4 A. 206; 5 A. 618.

ART. 1935.—In cases where no conventional interest is stipulated, the legal interest, at the time the defendant was put in default, shall be recovered, although the rate may have been subsequently changed by law.

ART. 1936.—The surety, who is obliged to pay money for his principal, is not bound by the preceding rule respecting interest on interest: he shall receive interest on the whole sum he has paid, whether for principal or interest from the time of the payment, without any demand.

6 L. 762.

ART. 1937.—The interest on loans, on bottomry and respondentia, may also exceed the rate of legal or conventional interest.

ART. 1938.—The debtor is liable only to such damages as were foreseen, or might have been foreseen at the time of contracting, when it is not owing to his fraud, that the obligation has not been executed.

ART. 1939.—Sums, which are due for yearly rents, for annuities, either forever or for life, bear interest from the day the debtor was in default, either by the terms of his agreement or otherwise. The same rule applies to sums due for the restitution of profits, or for interest paid by a third person in discharge of the debtor.

SECTION V.—*Of the Interpretation of Agreements.*

ART. 1940.—Legal agreements having the effects of law upon the parties, none but the parties can abrogate or modify them. Upon this principle are established the following rules:

11 L. 72.

1. That no general or special legislative act can be so construed as to avoid or modify a legal contract, previously made;

2. That courts are bound to give legal effect to all such contracts, according to the true intent of all the parties;

3. That the intent is to be determined by the words of the contract, when these are clear and explicit, and lead to no absurd consequence;

2 A. 168.

4. That it is the common intent of the parties, that is, the interest of all, that is to be sought for; if there was a difference in this intent, there was no common consent, and consequently no contract.

1 A. 35, 232; See 12 R. 31.

All the articles of this section contain rules established by law for discovering the intent, when either the words of the agreement are ambiguous, or circumstances render it doubtful. They apply as well to verbal as to written agreements.

ART. 1941.—The words of a contract are to be understood, like those of a law, in the common and usual signification, without attending so much to grammatical rules, as to general and popular use.

ART. 1942.—Terms of art or technical phrases are to be interpreted according to their received meaning with those who profess the art or profession to which they belong.

1 A. 35; 2 A. 163.

ART. 1943.—When there is a doubt as to the true sense of the words of a contract, they may be explained by referring to other words or phrases used in making the same contract.

See 12 R. 31.

ART. 1944.—When there is any thing doubtful in one contract, it may be explained by referring to other contracts or agreements made on the same subject between the same parties, before or after the agreement in question.

ART. 1945.—When there is any thing doubtful in agreements, we must endeavor to ascertain what was the common intention of the parties, rather than to adhere to the literal sense of the terms.

10 R. 365; 12 R. 31, 167.

ART. 1946.—When a clause is susceptible of two interpretations, it must be understood in that in which it may have some effect, rather than in a sense which would render it nugatory.

ART. 1947.—Terms, that present two meanings, must be taken in the sense most congruous to the matter of the contract.

10 R. 365.

ART. 1948.—Whatever is ambiguous, is determined according to the usage of the country where the contract is made.

ART. 1949.—In contracts, the clauses in common use must be supplied, though they be not expressed.

ART. 1950.—All clauses of agreements are interpreted the one by the other, giving to each the sense that results from the entire act.

See 12 R. 31.

ART. 1951.—When the intent of the parties is doubtful, the construction put upon it by the manner in which it has been executed by both, or by one with the express or implied assent of the other, furnishes a rule for its interpretation.

1 L. 260; 12 L. 546; 3 R. 171; 12 R. 167; 1 A. 232; 2 A. 249, 475; 3 A. 663; 4 A. 441; See 6 R. 373.

ART. 1952.—In a doubtful case, the agreement is interpreted against him who has contracted the obligation.

6 L. 191; 3 R. 171; 1 A. 391; 2 A. 249; 3 A. 224; 6 A. 204.

ART. 1953.—But if the doubt or obscurity arise for the want of necessary explanation, which one of the parties ought to have given, or from any other negligence or fault of his, the construction most favorable to the other party shall be adopted, whether he be obligor or obligee.

6 A. 204; See 10 R. 52.

ART. 1954.—However general be the terms in which a contract is couched, it extends only to the things, concerning which it appears that the parties intended to contract.

ART. 1955.—But when the object of the contract is an aggregate, composed of many or of different articles, there the general description or aggregate name will include all the particular articles which enter into the composition of the whole, although they were not specified, or were even unknown to both or either of the parties. A release of a share in a succession, under this rule, shall not be set aside on an allegation that the succession contained more or less than was supposed; where there is concealment, however, or fraud, it would be void under other rules before laid down.

ART. 1956.—The rule, laid down in the last article, must also be taken with the further modification that, although the aggregate appellation or description be used, yet, if by some other part of the contract, it appears that the intent of the parties was not to include the whole, but only that part of which they had notice, such evident intent shall correct the universality of the description. Thus, in a release of a whole share in a succession, if there be a reference to an inventory as descriptive of what that share is, the contract, notwithstanding the general terms, shall be confined to what is contained in the inventory.

ART. 1957.—When a contract contains general obligations, and the parties, in order to avoid a doubt whether a particular case comes within the scope of the agreement, have made special provision for such case, the general terms of the contract shall not, on this account, be restricted to the single case that is provided for.

SECTION VI.—*Of the Obligations to Perform, as incidents to a Contract, all that is required by Equity, Usage, or Law.*

ART. 1958.—When the intent of the parties is evident and lawful, neither equity nor usage can be resorted to, in order to enlarge or restrain that intent, nor can any law operate to that effect, unless it be some prohibition or other provision, which the parties had no right to modify or renounce.

ART. 1959.—Equity, usage, and law supply such incidents only as the parties may reasonably be supposed to have been silent upon from a knowledge that they would be supplied from one of these sources.

ART. 1960.—The equity intended by this rule is founded in the Christian principle not to do unto others that which we would not wish others should do unto us, and on the moral maxim of the law that no one ought to enrich himself at the expense of another. When the law of the land, and that which the parties have made for themselves by their contract, are silent, courts must apply these principles to determine what ought to be incidents to a contract, which are required by equity.

3 A. 203, 326; 4 A. 145; See 12 L. 546; 1 A. 197; See 1855, 1856.

ART. 1961.—By the word *usage*, mentioned in the preceding arti-

cles, is meant that which is generally practised in affairs of the same nature with that which forms the subject of the contract.

House rent in some cities is generally paid by the month, in others by the quarter. In a contract for the hire of a house, without expressing when the rent was to be paid, the deficiency would be supplied by proof of the usage, but if a contrary intent appear in the contract, the usage would not contravene it.

See 8 M. 309; 1 N. S. 192; 7 L. 211, 524; 18 L. 380; 4 R. 331; See 2686.

ART. 1962.—The *law*, intended by the rule before referred to, means such legislative provisions as provide for these cases in which the parties have not declared their intention. When the contracting parties have not derogated from such law, its provisions are to be followed. The laws directing a community of matrimonial gains and a warranty on sales, are examples of this kind of legislative provision, which take effect and regulate the contract when the parties make no agreement that contravenes them.

SECTION VII.—*What Contracts shall be avoided by Persons not Parties to them.*

ART. 1963.—Contracts, considered with respect to their operation on property, either purport to transfer, or to give some determinate right upon it. A sale or exchange is an example of the first, a pledge or mortgage of the second of these species of contracts. There is a third right implied in all obligations, to wit: That the property of the debtor shall be liable for all consequences attending their non-performance; but this right cannot be exercised, unless the contract be broken, nor until judgment be obtained for the recovery of what is due in consequence of its breach.

6 L. 83; 11 L. 424; 16 L. 363; 11 R. 190; See 2 L. 543; 1 A. 132, 262; 3 A. 627; 4 A. 36; 5 A. 400;
See 1959.

ART. 1964.—From the principle, established by the last preceding article, it results that every act done by a debtor with the intent of depriving his creditor of the eventual right he has upon the property of such debtor, is illegal, and ought, as respects such creditor, to be avoided. This can be done in the mode and under the circumstances set forth in the following rules.

9 L. 355; 11 L. 530; 16 L. 369; 11 R. 190; See 11 L. 464.

§ 1.—*Of the Action of the Creditors in Avoidance of Contracts, and its Incidents.*

ART. 1965.—The law gives to every creditor, when there is no cession of goods as well as to the representatives of all the creditors where there is any such cession, or other proceedings by which they are collectively represented, an action to annul any contract made in fraud of their rights.

1 L. 500 2 L. 16, 19; 9 L. 355; 11 L. 521; 4 L. 341; 16 L. 106; 16 L. 369, 559; 17 L. 253; 4 A. 309
365; See 8 L. 461; 18 L. 339; 4 A. 365.

ART. 1966.—This action can only be exercised, when the debtor has not property sufficient to pay the debt of the complaining creditor, or of all his creditors where there has been a cession, or any proceeding analogous thereto.

1 L. 500.

ART. 1967.—It cannot be exercised by individual creditors, until their debts are liquidated by a judgment, unless the defendant in such action be made party to the suit for liquidating the debt brought against the original debtor in the manner hereinafter directed.

1 R. 525; 10 R. 387; 4 A. 135; 5 A. 401; See 1 L. 500; 12 L. 197; 10 R. 399.

ART. 1968.—The defendant in such action may demand a discussion of the property belonging to the original debtor, before any judgment shall be pronounced in the suit to avoid the contract, and on his pointing out and proving the existence of such property situate within this State and the title to which is not in dispute, the suit against him shall be staid until such property shall be discussed, and if the result of this discussion be that the property pointed out is not applicable to the payment of the plaintiff, the defendant shall bear all the expenses of the same.

4 L. 329; See 1 L. 500; 12 R. 141.

ART. 1969.—If, during the pendency of the action given by this section, the original debtor discharges the debt due to the plaintiff or acquires the property applicable to its payment and sufficient in amount, such action can no longer be sustained, it being the true intent of the law that a contract avoidable by creditors under this section, cannot on that account be avoided by either of the parties.

ART. 1970.—The plaintiff in the action given in this section may join the suit for annulling the contract to that which he brings against the original debtor for liquidating his debt by a judgment, and in such suit either of the defendants may controvert the demand of the plaintiff.

1 L. 500, 503; 1 R. 525; 10 R. 399; See 15 L. 470; 10 R. 387.

ART. 1971.—When the defendant in the action given by this section has not been made party to the suit against the original debtor, he may controvert the demand of the plaintiff, although it be liquidated by a judgment, in the same manner that the debtor might have done before the judgment.

1 R. 525; 10 R. 387, 399; 2 A. 544; 4 A. 135; See 12 L. 200.

ART. 1972.—The judgment in this action, if maintained, shall be that the contract be avoided as to its effects on the complaining creditors, and that all the property or money taken from the original debtor's estate, by virtue thereof, or the value of such property to the amount of the debt, be applied to the payment of the plaintiffs.

6 L. 540; 17 L. 258, 559; 16 L. 144; 9 R. 231; 10 R. 399; 2 A. 14; 6 A. 552.

§ 2.—*What Contracts shall be avoided by this Action.*

ART. 1973.—No contract shall be avoided by this action but such as are made in fraud of creditors, and such as, if carried into execution,

would have the effect of defrauding them. If made in good faith, it cannot be annulled, although it prove injurious to the creditors, and although made in bad faith, it cannot be rescinded, unless it operate to their injury.

9 L. 355; 10 L. 345, 348; 16 L. 145, 150, 363; 19 L. 600; 1 R. 527; 2 R. 38, 99; 4 R. 408; 11 R. 190, 493, 533; See 4 L. 250; 12 R. 141.

ART. 1974.—If the contract be onerous, and the original debtor made it with intent to defraud his creditors, but the person, with whom he contracted, was in good faith, the contract cannot be annulled, except under the circumstances and in the manner hereinafter provided.

10 L. 345, 348; 16 L. 150; 19 L. 600.

ART. 1975.—If the contract be purely gratuitous, it shall be presumed to have been made in fraud of creditors, if, at the time of making it, the debtor had not over and above the amount of his debts, more than twice the amount of the property passed by such gratuitous contract.

16 L. 150; See 10 L. 369.

ART. 1976.—If the contract be onerous, but made in fraud on the part of the debtor, but in good faith on the part of the person with whom he contracted, if the value of the property transferred by such contract exceed by one-fifth the price or consideration given for it, the creditors may annul the contract, and take back the property on paying the price or the value of the consideration with interest, but in this case they shall not receive the fruits.

7 L. 311; 16 L. 145.

ART. 1977.—If the party, with whom the debtor contracted, be in fraud as well as the debtor, he shall not, on the annulling the contract, be entitled to a restitution of the price or consideration he may have paid, except for so much as he shall prove has inured to the benefit of the creditors by adding to the amount of property applicable to the payment of their debts; but if the only consideration be a sum due from such debtor to the party with whom he contracted, then the only restitution to be made is the placing the parties in the situation in which they were before the contract complained of was made.

6 L. 83; 11 R. 190; 2 A. 14.

ART. 1978.—But if such fraud consisted merely in the endeavor to obtain a preference over other creditors, for the securing or payment of a just debt, under circumstances in which by law the endeavor to obtain such preference is declared to be a constructive fraud, in such case the party shall only lose the advantage endeavored to be secured by such contract, and shall be reimbursed what he may have given or paid, but without interest; and he shall restore all advantages he has received from the transaction.

3 L. 284; 4 L. 83; 6 A. 552.

ART. 1979.—Every contract shall be deemed to have been made in fraud of creditors, when the obligee knew that the obligor was in insolvent circumstances, and when such contract gives to the obligee, if he be a creditor, any advantage over other creditors of the obligor.

4 L. 254; 6 L. 83; 10 L. 363; 2 R. 38, 99; 4 R. 438; 5 R. 238; See 12 R. 141; See 1978.

ART. 1980.—By being in insolvent circumstances is meant, that the whole property and credits are not equal in amount, at a fair appraisal, to the debts due by the party. And if he, who alleges the insolvency, shows the amount of debts, it is incumbent on the other party to show property to an equal or greater amount. To prove the state of his affairs at the period of the contract, the debtor may, at the option of the plaintiff, be examined as a witness in the action for annulling the contract.

4 L. 254; 3 R. 106, 407; 4 R. 438; 5 A. 400; See 12 R. 141.

ART. 1981.—No sale of property, or other contract made in the usual course of the party's business, nor any payment of a just debt in money, shall be affected by virtue of any provision in this section, although the party was in insolvent circumstances, and the person with whom he contracted, or to whom he made the payment, knew of such insolvency.

4 L. 341; 19 L. 594; 4 R. 438; See 6 L. 345.

ART. 1982.—No contract made between the debtor and one of his creditors for the purpose of securing a just debt, shall be set aside under this section, although the debtor were insolvent to the knowledge of the creditor with whom he contracted, and although the other creditors are injured thereby, if such contract were made more than one year before bringing the suit to avoid it, and if it contain no other cause of nullity than the preference given to one creditor over another.

3 L. 26; 4 L. 260; 3 L. 508; 9 L. 106; 11 L. 424, 532; 14 L. 303, 322; 16 L. 103, 375; 19 L. 600; 1 R. 435; 2 R. 277; 4 R. 408, 438; 5 R. 288; 6 R. 142; 9 R. 267; 11 R. 298; 2 A. 659; 3 A. 248; 4 A. 65;
See 3 L. 274.

ART. 1983.—If a debtor, in insolvent circumstances, shall anticipate the payment of a debt not yet payable, and shall, to the injury of the creditors whose debts were either then due, or would fall due before that of which he anticipated the payment, this shall be deemed to have been done in fraud of the creditors, and the creditor so preferred shall be obliged to share the loss ratably with the complaining creditors, each creditor, however, preserving the right of mortgage or privilege, if any, which his original debt gave him by law.

ART. 1984.—Not only contracts which dispose of property, but all others which are made in fraud of creditors, and deprive them of their recourse to the property of their debtor, come within the provisions of this section. The renunciation of a succession or other right to property, the release of a debt without payment, or any other act of this kind, may be avoided by creditors, when done to their prejudice, under the rules above established.

19 L. 431; 1 R. 26; 4 R. 438; 8 R. 13; 1 A. 265; 2 A. 363; 3 A. 338; See 7 L. 569.

ART. 1985.—In case the debtor refuse or neglect to accept an inheritance to the prejudice of his creditors, they may accept the same, and exercise all his rights in the manner provided for in the title of successions, and they are authorized, by virtue of the action given by

this section, to exercise all the rights which the debtor could do for recovering possession of the property to which he is entitled, in order to make the same available to the payment of their debts.

11 R. 314.

ART. 1986.—There are rights of the debtor, however, which the creditors cannot exercise, even should he refuse to avail himself of them.

They cannot require the separation of property between husband and wife, nor can they oblige their debtor to accept a donation *inter vivos* made to him, nor can they accept it in his stead. Neither can they call on a co-heir of the debtor to collate, when such debtor has not exercised that right.

2 A. 843.

ART. 1987.—There are also rights which are merely personal, that cannot be made liable to the payment of debts, and therefore no contract respecting them comes within the provision of this section; these are the rights of personal servitude, of use and habitation, of usufruct to the estate of a minor child, to the income of dotal property, to money due for the salary of an office, or wages, or recompense for personal services.

1 R. 399, 435; 4 R. 340; 2 A. 843; 4 A. 307; See C. P. 647.

ART. 1988.—No creditor can, by the action given by this section, sue individually to annul any contract made before the time his debt accrued.

5 N. S. 96, 634; 2 L. 543; 4 L. 142, 261; 5 L. 126; 6 L. 540; 12 L. 201; 17 L. 360; 1 R. 435; 1 A. 132; 6 A. 89.

ART. 1989.—The action, given by this section, is limited to one year: if brought by a creditor individually, to be counted from the time he has obtained judgment against the debtor; if brought by syndics or other representatives of the creditors collectively, to be counted from the day of their appointment.

4 L. 260; 8 L. 308; 9 L. 107; 11 L. 346, 424, 532; 14 L. 322; 16 L. 106, 370; 19 L. 594; 1 R. 435; 2 R. 277, 408, 438; 4 R. 395, 436; 5 R. 283; 6 R. 142; 9 R. 518; 10 R. 74; 11 R. 314; 1 A. 132, 262, 440; 2 A. 453, 659; 3 A. 245, 627; 4 A. 36, 65, 329; 5 A. 400; See S. N. S. 675; 3 L. 26, 29; See 1982.

CHAPTER IV.

OF THE DIFFERENT KINDS OF OBLIGATIONS.

SECTION I.—*General Division of the Subject.*

ART. 1990.—The preceding chapters of this title have established rules applicable to contracts in general: this contains an enumeration of such obligations as are usually inserted in different contracts, and the following chapters show how they may be formed, proved and extinguished. Subsequent titles enumerate the different kinds of contracts into which the general obligations may enter, and provides rules for their government.

ART. 1991.—Independent of the division of obligations contained in

the first chapter of this title, those, that usually enter into particular contracts, may be further distinguished by the following classification :

Those which are strictly personal, or heritable, or real ;

Simple or conditional ;

Limited or unlimited as to the time of performance ;

Disjunctive or alternative ;

In relations to the parties, joint, several, or in solido ;

In their nature, divisible or indivisible ;

As to their form, penal or not penal.

Each of these divisions forms the subject of a different section of this chapter.

SECTION II.—*Of strictly Personal, Heritable, and Real Obligations.*

ART. 1992.—An obligation is strictly personal, when none but the obligee can enforce the performance, or when it can be enforced only against the obligor.

It is heritable, when the heirs and assigns of the one party may enforce the performance against the heirs of the other.

It is real, when it is attached to real property, and passes with it into whatever hands it may come, without making the third possessor personally responsible.

ART. 1993.—An obligation may be personal as to the obligee, and heritable as to the obligor, and it may in like manner be heritable as to the obligee, and personal as to the obligor.

ART. 1994.—Every obligation shall be deemed to be heritable as to both parties, unless the contrary be specially expressed, or necessarily implied from the nature of the contract.

See 6 L. 102.

ART. 1995.—The obligation shall be presumed to be personal on the part of the obligor, whenever, in a contract to do, he undertakes to perform any thing that requires his personal skill or attention ; in this case, if that, which was to be done, was not solely and exclusively for the use or gratification of the obligee, the obligation, although personal as to the obligor, will be heritable against the heirs of the obligee for the equivalent to be paid or given for that which was to be done.

ART. 1996.—The obligation shall be presumed to be personal as to the obligee, in a contract to do or to give, when that which was to be done or given, was exclusively for the personal gratification of the obligee, and could produce no benefit to his heirs.

ART. 1997.—In case of obligations purely personal as to the obligor, if he have received an equivalent that can be appreciated in money as a consideration, but dies before performance of his obligation, his heirs may be obliged to restore it or its value.

ART. 1998.—In like manner, if the obligation be purely personal as

to the obligee who dies before performance, his heirs may recover from the obligor the value of any equivalent he may have received.

ART. 1999.—An obligation to pay an annuity to a certain person during the life of the obligor, is personal as to both, and is extinguished by the death of either.

ART. 2000.—A merely personal obligation to do, imposed by testament as the condition on which a legacy is to take effect, is void, if the legatee die before performance, or before he has been put in default, and the legacy will take effect.

ART. 2001.—But if what is to be done, be a thing that can as well be done by the heirs of the legatee as by him, the obligation shall be heritable, and they must perform it before the legacy can take effect. The provisions of this and the preceding article relate only to testamentary dispositions.

ART. 2002.—All contracts for the hire of labor, skill, or industry without any distinction, whether they can be as well performed by any other as by the obligor, unless there be some special agreement to the contrary, are considered as personal on the part of the obligor, but heritable on the part of the obligee.

Contracts of mandate and partnership are mutually personal.

ART. 2003.—Heritable obligations and stipulations give to and impose upon heirs, assigns, and other representatives, the same duties and rights that the original parties had and were liable to, except that beneficiary heirs can only be liable to the amount of the succession.

See 6 L. 102.

ART. 2004.—All rights acquired by an heritable obligation may be assigned; this assignment may be made, expressly by contract granting such right, or impliedly by the conveyance of the property to which they are attached.

ART. 2005.—When obligations are attached to real property, they form the third branch of the first division of obligations of this chapter, and are called real obligations.

ART. 2006.—Not only the obligation, but the right resulting from a contract relative to real property, passes with the property. Thus, the right of servitude in favor of real property, passes with it, and thus also the heir or other acquirer will have the right to enforce a contract made for the improvement of the property by the person from whom he acquired it.

ART. 2007.—Real obligations may be created in three ways:

1. By the alienation of real property, subject to a real condition, either expressed or implied by law;
2. By alienating to one person the real property, and to another, some real right to be exercised upon it:

3. By the creation of a right of mortgage upon it.

All those contracts give rise to obligations purely real on the part of those who acquire the land, under whatever species of title they possess it; they are not personally liable, but the real property is, and by abandoning it to the obligee, they relieve themselves from all responsibility.

A sale subject to a rent charge, or to a right of redemption as consideration of the sale, are examples of the first kind of obligation; servitudes, the right of use and habitation and usufruct, are examples of the second; and the several kinds of mortgages, and the creation of a rent charge of the third.

See 2 L. 92.

ART. 2008.—The real obligation, created by condition annexed to the alienation of real property, is susceptible of all the modifications that the will of the parties can suggest, except such as are forbidden by law. These conditions are either conditions precedent, which suspend the operation of the contract until they are performed, or subsequent and resolatory, which, unless they are performed, annul the contract. These will be more fully defined in the section which treats of conditional obligations.

ART. 2009.—There are also conditions implied by law, which create a legal obligation, such as the obligation to pay the price to the seller, and to furnish roads to the public.

See 2 L. 92.

ART. 2010.—Not only servitudes, but leases and all other rights, which the owner had imposed on his land before the alienation of the soil, form real obligations which accompany it in the hands of the person who acquires it, although he have made no stipulation on the subject, or they be not mentioned in the act of transfer. The purchaser may, if the circumstances permit it, have relief against the seller for concealment of such charges, but the law establishes the rule, that no one can transfer a greater right than he himself has, except where the neglect of some formality required by law has subjected the owner of the real encumbrance required to a loss of his right, in favor of a creditor or *bona fide* purchaser.

See 4 N. S. 666; 2 L. 92, 514.

ART. 2011.—The several kinds of mortgages which create a real obligation, and the rules to which they are subject, will be found in the corresponding title of this book.

ART. 2012.—A rent charge, created by way of condition to the alienation of the property, has been herein before explained. But a rent charge may be created and imposed on particular property, independent of any alienation of it, for the security or extinguishment of a debt, and it may be perpetual or temporary, and, in either case, forms a real obligation, which passes with the land.

ART. 2013.—By the constitution of rent charge, the possession of the property does not pass to the obligee, it is merely a designation of

the property, which is subject to the obligation; should the possession be delivered, it becomes another species of contract called antichresis, the rules relative to which are found under the proper head.

ART. 2014.—Considered with respect to those who have contracted them some real obligations are also personal, such are those created by mortgage for the payment of a debt. Others are strictly real, both as to the contracting party and his heirs or other successors. A mortgage given to secure the debt of another, without any obligation of personal responsibility, is an example of this latter kind. But no real obligation is personal, as to a subsequent possessor of the property on which it is created, unless he has made it such by his own act.

SECTION III.—*Of Simple and Conditional Obligations,*

§ 1. *General Provisions.*

ART. 2015.—Simple obligations are such as are not dependent for their execution on any event provided for by the parties, and which are not agreed to become void, on the happening of any such event.

2 A. 989; See 5 N. S. 409; 3 L. 308; 2 R. 163.

ART. 2016.—Conditional obligations are such as are made to depend on an uncertain event. If the obligation is not to take effect until the event happen, it is a suspensive condition; if the obligation takes effect immediately, but is liable to be defeated when the event happens, it is then a resolutive condition.

3 L. 313; 2 A. 989; See 10 R. 521.

ART. 2017.—Conditions, whether suspensive or resolutive, are either casual, potestative, or mixed.

ART. 2018.—The casual condition is that which depends on chance, and is no way in the power either of the creditor or of the debtor.

ART. 2019.—The potestative condition is that which makes the execution of the agreement depend on an event which it is in the power of the one or the other of the contracting parties to bring about or to hinder.

3 L. 313.

ART. 2020.—A mixed condition is one that depends at the same time on the will of one of the parties, and on the will of a third person, or on the will of one of the parties and also on a casual event.

ART. 2021.—Conditions are either express or implied. They are express, when they appear in the contract; they are implied, whenever they result from the operation of law, from the nature of the contract, or from the presumed intent of the parties.

2 A. 989; 6 A. 84.

ART. 2022.—Whether the parties intended to create a condition, or only to modify the obligation without making its existence depend on

the event, must be determined, in doubtful cases, by applying the rules herein before established for the interpretation of obligations.

ART. 2023.—The contract for which the condition forms a part, is, like all others, complete by the assent of the parties; the obligee has a right of which the obligor cannot deprive him; its exercise is only suspended, or may be defeated, according to the nature of the condition.

3 A. 274.

ART. 2024.—The right, described in the last preceding article, is heritable, if it be not one of those that result from an obligation designated in the preceding section as a personal one.

ART. 2025.—The right acquired by a legatee under a conditional bequest, is the same as that given to an obligee by contract, and creates a corresponding obligation on the heirs to deliver the legacy on the happening of the condition. But there is this difference, that (except in the case provided for in the last preceding section, of the condition to do a merely personal act), the right is not transmitted to the heirs of the legatee, in case he die before the condition happens, unless the testator has expressed a different intention.

ART. 2026.—Every condition of a thing impossible, or *contra bonos mores* (repugnant to moral conduct), or prohibited by law, is null, and renders void the agreement which depends on it.

ART. 2027.—The condition not to do a thing impossible, does not render void the obligation contracted under that condition.

ART. 2028.—Physical and moral impossibilities only are intended by the preceding articles: If the condition be only relatively impossible that is to say, impracticable by the obligor, only from the want of skill, strength or means, but practicable by another, it is not an impossible condition.

ART. 2029.—Every obligation is null that has been contracted on a potestative condition, on the part of him who binds himself.

See 2 A. 971; 5 A. 231; See 3260.

ART. 2030.—The last preceding article is limited to potestative conditions, which make the obligation depend solely on the exercise of the obligor's will; but if the condition be, that the obligor shall do or not do a certain act, although the doing or not doing of the act depends on the will of the obligor, yet the obligation depending on such condition is not void.

ART. 2031.—An obligation may also be made by consent of the parties, to depend on the will of the obligee for its duration. Thus a lease may be made during the will of the lessor, and a sale may be made conditioned to be void, if the vendor chooses to redeem the property sold.

ART. 2032.—Every condition must be performed in the manner that it is probable that the parties wished and intended that it should be.

3 L. 502; 11 L. 374; 2 A. 163.

ART. 2033.—When an obligation has been contracted on condition that an event shall happen within a limited time, the condition is con

sidered as broken, when the time has expired without the event having taken place. If there be no time fixed, the condition may always be performed, and it is not considered as broken, until it is become certain that the event will not happen.

1 A. 424; 3 A. 274.

ART. 2034.—When an obligation has been contracted, on condition that a particular event shall not happen within a certain space of time, that condition is fulfilled, when that time is elapsed without the event's having taken place; it is equally fulfilled, if, before the expiration of the time, it be certain that the event will not take place; and if the time be not fixed, the condition is not complied with, until it be certain that the event will not happen.

ART. 2035.—The condition is considered as fulfilled, when the fulfilment of it has been prevented by the party bound to perform it.

3 L. 501; 4 R. 45; See 7 N. S. 166; 19 L. 235; 6 R. 450.

ART. 2036.—The condition being complied with, has a retrospective effect to the day that the engagement was contracted; if the creditor dies before the accomplishment of the condition, his rights devolve on his heirs.

ART. 2037.—The creditor may, before the fulfilment of the condition, perform all acts conservatory of his rights.

§ 2.—*Of the Suspensive Condition.*

ART. 2038.—The obligation contracted on a suspensive condition, is that which depends, either on a future and uncertain event, or on an event which has actually taken place, without its being yet known to the parties.

In the former case, the obligation cannot be executed till after the event; in the latter, the obligation has its effect from the day on which it was contracted, but it cannot be enforced until the event be known.

ART. 2039.—When the obligation has been contracted on a suspensive condition, the thing which forms the subject of the contract is at the risk of the obligor, until the event which forms the condition has happened, subject, however, to the following restrictions and modifications of his responsibility:

If the thing be entirely destroyed, without the fault of the debtor, the obligation is extinguished;

If the thing be impaired, without the fault of the debtor, it is at the option of the creditor, either to dissolve the obligation, or to require the thing in the state in which it is, without diminution in the price;

If the thing be impaired, through the fault of the debtor, the creditor has a right to dissolve the obligation, or to require the thing in the state in which it is, with damages.

§ 3.—*Of the Resolutive Condition.*

ART. 2040.—The dissolving condition is that which, when accomplished, operates the revocation of the obligation, placing matters in the same state as though the obligation had not existed.

It does not suspend the execution of the obligation; it only obliges

the creditor to restore what he has received, in case the event provided for in the condition takes place.

19 L. 31; 10 R. 412; 2 A. 989; 6 A. 3.

ART. 2041.—A resolutive condition is implied in all commutative contracts, to take effect, in case either of the parties do not comply with his engagements: in this case the contract is not dissolved of right; the party complaining of a breach of the contract may either sue for its dissolution, with damages, or, if the circumstances of the case permit, demand a specific performance.

15 L. 75; 8 R. 157; 10 R. 412; 11 R. 18; 6 A. 3.

ART. 2042.—In all cases the dissolution of a contract may be demanded by suit or by exception, and when the resolutive condition is an event not depending on the will of either party, the contract is dissolved of right, but, in other cases, it must be sued for; and the party in default may, according to circumstances, have a further time allowed for the performance of the condition.

8 L. 522; 13 L. 249; 9 R. 377; 12 R. 472; 6 A. 3; See 7 M. 218.

SECTION IV.—*Of Limited and Unlimited Obligations as to the Time of their Performance.*

ART. 2043.—The time given or limited for the performance of an obligation is called its *term*.

ART. 2044.—A term may not only consist of a determinate lapse of time, but also of an event, provided that event be, in the course of nature, certain; if it be uncertain, it forms a condition.

ART. 2045.—When no term is fixed by the parties for the performance of the obligation, it may be executed immediately, unless from the nature of the act, a term, either certain or uncertain, must be applied. Thus, an obligation to pay money, without any stipulation for time, may be enforced at the will of the obligee. But a promise to make a crop of sugar is necessarily deferred, until the uncertain period when the cane shall be fit to cut.

ART. 2046.—The term differs from the condition, inasmuch as it does not suspend the engagement, but only retards its execution.

ART. 2047.—What is due only at a certain time, cannot be demanded before the expiration of the intermediate time; but what has been paid in advance, cannot be re-demanded.

ART. 2048.—The term is always presumed to be stipulated in favor of the debtor, unless it result from the stipulation, or from circumstances, that it was also agreed upon in favor of the creditor.

ART. 2049.—Wherever there is a cession of property, either voluntary or forced, all debts due by the insolvent shall be deemed to be due, although contracted to be paid at a term not yet arrived; but in such case, a discount must be made of the interest at the highest conventional rate, if none has been agreed by the contract.

1 L. 500; 6 L. 762; 8 L. 532; 10 R. 533.

ART. 2050.—If a debt be contracted to be paid at a term, and security be given for the payment, if, from whatever cause, the security should fail, or be rendered insufficient, the creditor may, before the obligation is due, exact, either that good security be given, or that the debt be immediately paid.

ART. 2051.—If the contract be to give good security, and a person be afterwards given as such security, who fails, the provision of the last preceding article takes effect; but when security is given of a determinate person, then there is no action given on the failure of the security.

ART. 2052.—Where a term is given or limited for the performance of an obligation, the obligor has until sunset of the last day limited for its performance, to comply with his obligation, unless the subject of the contract cannot be done after certain hours of that day.

ART. 2053.—When the contract is to do the act in a certain number of days, or in a certain number of days after the date of the contract, the day of contract is not included in the number of days to be counted, and the obligor has until sunset of the last day of the number enumerated, for the performance of his contract, with the exception contained in the last preceding article.

3 A. 527.

ART. 2054.—Where the obligation is not to do a thing, without a notice of a certain number of days, or until after so many days, neither the day of the contract, nor the day of its performance, are calculated.

ART. 2055.—Where the term, referred to by the contract, consists of one or more months, the parties, if they have not made any other explanation, shall be deemed to have meant months, in the order in which they stand in the calendar after the date of the obligation, and with the number of days such months respectively have.

ART. 2056.—Where the term, referred to in the contract, consists of one or more years, the calendar year shall be presumed to have been intended.

SECTION V.—*Of Conjunctive and Alternative Obligations.*

ART. 2057.—When several different things form the subject of a contract, it is either conjunctive or alternative.

ART. 2058.—A conjunctive obligation is one in which the several objects in it are connected by a copulative, or in any other manner which shows that all of them are severally comprised in the contract. This contract creates as many different obligations as there are different objects; and the debtor, when he wishes to discharge himself, may force the creditor to receive them separately.

ART. 2059.—But if several things be comprehended in one general name in the contract, it is not conjunctive. The sale of a flock of sheep, or the stock on a farm, are examples of this exception.

ART. 2060.—Where a sum is promised to be paid at different instalments, a conjunctive obligation is created, and the payment may be severally paid or enforced. Rents, payable at fixed periods, come also under this rule.

ART. 2061.—But where the things, which form the subject of the contract, are separated by a disjunctive, then the obligation is alternative. A promise to deliver a certain thing, or to pay a specified sum of money, is an example of this kind of obligation.

ART. 2062.—The debtor in an alternative obligation, is discharged by the delivery of one of the two things that were comprised in the obligation.

ART. 2063.—The option belongs to the debtor, unless it has been expressly granted to the creditor.

ART. 2064.—The debtor may exonerate himself by delivering one of the two things promised, but he cannot force the creditor to receive a part of the one, and a part of the other.

ART. 2065.—The obligation is pure and simple, although contracted in an alternative manner, if one of the two things promised could not be the subject of the obligation.

ART. 2066.—The alternative obligation becomes pure and simple, if one of the things promised be destroyed, even through the fault of the debtor, and can no longer be delivered. The price of that thing cannot be offered in its stead.

If both the things be destroyed, and the debtor be in fault with regard to one of them, he must pay the price of that one which was destroyed the last.

ART. 2067.—When, in the cases provided for in the preceding article, the option was given by agreement to the creditor; either only one of the things is destroyed, and then, if it be without the fault of the debtor, the creditor must have that one which remains; if the debtor be in fault, the creditor may demand the thing that remains, or the price of that which is destroyed.

Or both the things are destroyed, and then, if the debtor be in fault with regard to both, or even with regard to one of them alone, the creditor has his option to demand either of them.

ART. 2068.—If both the things be destroyed, without the fault of the debtor, and before he has delayed the delivery, the obligation becomes extinct.

ART. 2069.—The same principles apply to cases where there are more than two things comprised in the alternative obligation.

ART. 2070.—Where several alternative obligations are divided for their execution by different terms, there the election of one alternative for one of the terms, does not oblige the parties to make the same election for the others.

ART. 2071.—If an obligation or testamentary disposition, be made to different obligees, or legatees, or heirs, in the alternative, such obligation shall be deemed to proceed from error in wording of the obligation or will, and shall be construed conjunctively.

SECTION VI.—*Of several Obligations, joint Obligations, and Obligations in solido.*

§ 1.—*General Provisions.*

ART. 2072.—Where there are more than one obligor or obligee named in the same contract, the obligation it may produce may be either several or joint or *in solido*, both as regards the obligor and the obligee.

See 12 R. 183.

ART. 2073.—Several obligations are produced, when what is promised by one of the obligors is not promised by the other, but each one promises separately for himself to do a distinct act; such obligations, although they may be contained in the same contract, are considered as much individual and distinct as if they had been in different contracts, and made at different times.

10 R. 14; 3 A. 162.

ART. 2074.—In like manner, a contract may contain distinct obligations to perform different things in favor of several persons; the obligations in this case are several and unconnected, and each obligee has his separate and distinct remedy on the obligation created towards him individually.

12 R. 563.

ART. 2075.—When several persons join in the same contract to do the same thing, it produces a joint obligation on the part of the obligors.

15 L. 154; 10 R. 14; 3 A. 162, 351.

ART. 2076.—When one or more persons make an obligation to several persons for the performance of something for the common benefit of all the obligees, it creates an obligation which is joint in favor of the obligees.

12 R. 563.

ART. 2077.—When several persons obligate themselves to the obligee by the terms *in solido*, or use any other expressions, which clearly show that they intend that each one shall be separately bound to perform the whole of the obligation, it is called an obligation *in solido* on the part of the obligors.

See 12 R. 183.

ART. 2078.—In like manner, when the obligor contracts expressly, or by using the technical words *in solido*, that he will give to either one, or to all of several obligees the right of enforcing the obligation against him, it creates an obligation *in solido* in favor of the obligees.

§ 2.—*Of the Rules which govern several Obligations, and joint Obligations.*

ART. 2079.—Several obligations, although created by one act, have no other effects than the same obligations would have had, if made by separate contracts; therefore they are governed by the rules which apply to all contracts in general.

ART. 2080.—In every suit on a joint contract, all the obligors must be made defendants, and no judgment can be obtained against any, unless it be proved that all joined in the obligation, or are by law presumed to have done so.

3 L. 437, 274; 8 L. 524; 11 L. 453; 13 L. 482; 14 L. 365; 16 L. 119; 5 R. 224; 6 R. 351; 7 R. 181; 10 R. 430; 6 A. 423; See 10 R. 425.

ART. 2081.—In a suit on a joint obligation, judgment must be rendered against each defendant separately, for his proportion of the debt or damages, if the suit resolves itself into damages. If the suit be for a specific performance, each defendant may be compelled to execute his proportion of the obligation, if the nature of the case permit and justice require it. The proportion, meant by this and the succeeding articles, is calculated by the number of the obligors, each one answering for an equal part, unless the parties have expressed a different intention.

3 L. 438; 19 L. 385; See 5 L. 120; 12 R. 563; See 2 L. 419.

ART. 2082.—If one of the obligors in a joint obligation has performed or discharged his part of the obligation, although he must be joined in the suit, on account of the eventual interest he has for the repetition of his payment, if the contract be disproved or annulled; yet, if the contract be affirmed, the defendant, who has paid his proportion or performed his part, shall have judgment. The judgment for the costs is *in solido* against all the defendants who have not paid or performed their parts.

16 L. 119; 2 A. 539.

§ 3.—Of the Rules which govern Obligations between Creditors *in solido*.

ART. 2083.—The obligation is *in solido*, or joint and several between several creditors, when the title expressly gives to each of them the right of demanding payment of the total of what is due, and when the payment made to any one of them discharges the debtor, although the benefit of the obligation be to be shared and divided among the different creditors.

ART. 2084.—It is at the option of the debtor to pay any one of the creditors *in solido*, as long as he has not been prevented by a suit instituted by one of them.

Yet if one of the creditors *in solido* remits the debt, the debtor is hereby exonerated only as to the part coming to that individual creditor.

ART. 2085.—Every act, which interrupts prescription with regard to one of the creditors *in solido*, avails the other creditors.

§ 4.—Of the Rules which govern Obligations with respect to Debtors *in solido*.

ART. 2086.—There is an obligation *in solido* on the part of the debtors, when they are all obliged to the same thing, so that each may be compelled for the whole, and when the payment which is made by one of them, exonerates the others towards the creditor.

4 L. 151; 2 A. 334; See 12 R. 183.

ART. 2087.—The obligation may be *in solido*, although one of the debtors be obliged differently from the other to the payment of one and the same thing; for instance, if the one be but conditionally bound, whilst the engagement of the other is pure and simple, or if the one is allowed a term which is not granted to the other.

See 12 R. 183.

ART. 2088.—An obligation *in solido* is not presumed; it must be expressly stipulated.

This rule ceases to prevail only in cases where an obligation *in solido* takes place of right by virtue of some provisions of the law.

12 M. 316; 5 L. 123; 15 L. 154, 583; 5 R. 70; 5 R. 149; 3 A. 574; 6 A. 53.

ART. 2089.—The creditor of an obligation contracted *in solido*, may apply to any one of the debtors he pleases, without the debtor's having a right to plead the benefit of division.

2 A. 334, §30; See 3014.

ART. 2090.—A suit brought against one of the debtors does not bar the creditor from bringing suits on the same account against the others.

ART. 2091.—If the thing due has perished, through the fault of one or more debtors *in solido*, or while he or they delayed to deliver it, the other creditors are not discharged from the obligation of paying the value of the thing, but the latter are not liable for damages.

The creditor can claim damages only from the debtors by whose fault the thing was lost, and from those who delayed to deliver it.

ART. 2092.—A suit brought against one of the debtors *in solido*, interrupts prescription with regard to all.

2 A. 916, 970; 5 A. 551; See 12 R. 243; See 3517.

ART. 2093.—A demand of interest made of one of the debtors *in solido*, makes interest run with respect to all.

ART. 2094.—A co-debtor *in solido*, being sued by the creditor, may plead all the exceptions resulting from the nature of the obligation, and all such as are personal to himself, as well as such as are common to all the creditors.

He cannot plead such exceptions as are merely personal to some of the other co-debtors.

ART. 2095.—When one of the debtors becomes sole heir of the creditor, or when the creditor becomes sole heir of one of the debtors, the confusion extinguishes the debt *in solido* only for the part and portion of the debtor or of the creditor.

ART. 2096.—The creditor, who consents to the division of the debt with regard to one of the co-debtors, still has an action *in solido* against the others, but under the deduction of the part of the debtor whom he has discharged from the debt *in solido*.

ART. 2097.—The creditor, who receives separately the part of one of the debtors, without reserving in the receipt the debt *in solido* or his right in general, renounces the debt *in solido*, only with regard to that debtor.

The creditor is not deemed to remit the debt *in solido* to the debtor, when he receives from him a sum equal to the portion due by him, unless the receipt specifies that it is for his part.

The same is to be observed of the mere demand made of one of the co-debtors, for his part, if the latter has not acquiesced in the demand, or if a judgment has not been given against him.

ART. 2098.—The creditor, who receives separately and without reservation the portion of one of the co-debtors in the arrearages or interest of the debt, loses his claim *in solido* only as to the arrearages and interest due, and not as to those that may in future become due, nor as to the capital, unless the separate payment has been continued during ten successive years.

ART. 2099.—The obligation contracted *in solido* towards the creditor, is of right divided amongst the debtors, who, among themselves, are liable each only for his part and portion.

12 R. 153.

ART. 2100.—If one of the co-debtors *in solido* pays the whole debt, he can claim from the others no more than the part and portion of each.

If one of them be insolvent, the loss occasioned by his insolvency must be equally shared amongst all the other solvent co-debtors and him who has made the payment.

ART. 2101.—In case the creditor has renounced his action *in solido* against one of the debtors, and one or more of the other co-debtors become insolvent, the portion of the insolvent shall be made up, by equal contribution, by all the debtors, and even those preceadently discharged from the debt by the creditor *in solido*, shall contribute their part.

See 3 L. 351.

ART. 2102.—If the affair, for which the debt has been contracted *in solido*, concern only one of the co-obligees *in solido*, that one is liable for the whole debt towards the other co-debtors, who, with regard to him, are considered only as his securities.

ART. 2103.—There are many contracts in which the obligation is declared by law to be *in solido*, without any express stipulation to that effect; these will be found in the different chapters which treat of such contracts.

SECTION VII.—Of Obligations Divisible and Indivisible.

ART. 2104.—An obligation is divisible or indivisible, according as it has for its object, either a thing which, in its delivery, or a fact which, in its execution, is or is not susceptible of division, whether material or intellectual.

ART. 2105.—The obligation is indivisible, though the thing or the fact which is the object of it, be by its nature divisible, if the light, in which it is considered in the obligation, does not admit of its being partially executed.

ART. 2106.—The stipulation *in solido* does not give to the obligation the character of indivisibility.

§ 1.—*Of the Effects of Divisible Obligation.*

ART. 2107.—An obligation susceptible of division must be executed between the creditor and the debtor, as though it were indivisible. The divisibility is applicable only with regard to their heirs, who can demand of the debt, or who are liable to pay of it, only the part which they hold, or for which they are liable as representing the creditor or the debtor.

6 L. 18; 8 L. 536; 3 R. 432; See 5 N. S. 194; 7 N. S. 519; 10 R. 25; See 2149, 2612, 2624.

ART. 2108.—To the principle laid down in the preceding article, there is an exception with regard to the heirs of the debtor;

1. In case the debt be on a mortgage;
2. When it is of a determinate object;
3. When the debt is alternative of things at the option of the creditor, one of which is indivisible;
4. When one of the heirs is alone charged, by the title, with the execution of the obligation;
5. When it results, either from the nature of the engagement, or from the thing which is its object, or from the end proposed by the contract, that it was the intention of the parties that the debt should not be partially discharged.

In the three former cases, the heir who is in possession of the thing due, or of the property mortgaged for the debt, may be sued for the whole on the thing due, or on the property mortgaged, but he has recourse against the co-heirs.

In the fourth case, the heir is alone charged with the debt; and in the fifth case, every one of the heirs may also be sued for the whole; but the one sued has his recourse against the co-heirs.

§ 2.—*Of the Effect of the Indivisible Obligation.*

ART. 2109.—Every one of those who have conjointly contracted an indivisible debt, is liable for the whole, even though the obligation was not contracted *in solido*.

ART. 2110.—The case is the same with regard to the heirs of him who has contracted such an obligation.

ART. 2111.—Every heir of the creditor may require the execution of the indivisible obligation.

He cannot alone remit the whole of the debt; he cannot alone receive the price instead of the thing. If one of the heirs has alone remitted the debt, or received the price of the thing, his co-heir cannot demand the indivisible thing without making allowance for the portion of the co-heir who has remitted the debt or has received the price.

ART. 2112.—The heir of the debtor, being sued for the whole of the obligation, may ask for a delay to make his co-heirs parties to the suit, unless the debt be of such a nature that it can be discharged only by the heir sued, against whom, in that case, judgment may be given, he having recourse for indemnification against his co-heirs.

SECTION VIII.—*Of Obligations with Penal Clauses.*

ART. 2113.—A penal clause is a secondary obligation; entered into for the purpose of enforcing the performance of a primary obligation.

7 L. 102.

ART. 2114.—A penal obligation necessarily supposes two distinct contracts, one to do or to give that which is the principal object of the contract, the other to give or do something, if the principal object of the agreement be not carried into effect.

ART. 2115.—The penal clause has this in common with a conditional obligation, that the penalty is due only on condition that the first part of the contract be not performed. But it differs from it in this, that in penal contracts there must be always a principal obligation, independent of the penalty, while in conditional contracts, there is no obligation, unless the condition happens.

ART. 2116.—The penalty being stipulated merely to enforce the performance of the principal obligation, it is not incurred, although the principal obligation be not performed, if there be a lawful excuse for its non-performance, such as inevitable accident, or irresistible force.

See 3 L. 303.

ART. 2117.—But if the form of the contract be changed, and only one obligation entered into subject to a condition, then the obligor takes all risks upon himself, and the penalty becomes the principal obligation, and may be recovered, if the condition be not performed, although there may have been inevitable accidents to prevent it.

ART. 2118.—The cases provided for by the two last preceding articles, may always be modified, like all other obligations, by express stipulations. A contract to build a house by a certain day, and if it is not built, to pay one thousand dollars, is an example of a penal obligation, in which the obligor would be excused from paying the penalty, if inevitable accident had prevented him from building.

A contract to pay one thousand dollars, if the building be not finished at a stipulated time, is a conditional obligation, and gives a right to the penalty, if, from whatever cause, the condition be not performed.

See 3 L. 303.

ART. 2119.—The nullity of the principal obligation involves that of the penal clause.

The nullity of the latter does not involve that of the principal obligation.

6 R. 450.

ART. 2120.—The creditor, instead of exacting the penalty stipulated from the debtor who is in default, may sue for the execution of the principal obligation.

ART. 2121.—The penal clause is the compensation for the damages which the creditor sustains by the non-execution of the principal obligation.

He cannot demand the principal and the penalty together, unless the latter be stipulated for the mere delay.

7 L. 183.

ART. 2122.—Whether the principal obligation contain, or do not contain a term in which it is to be fulfilled, the penalty is forfeited, only when he who has obligated himself either to deliver, to take, or to do, is in delay.

6 N. S. 624; 6 R. 450; 10 R. 524; 3 A. 444; See 9 R. 535.

ART. 2123.—The penalty may be modified by the judge, when the

principal obligation has been partly executed, except in case of a contrary agreement.

6 L. 721.

ART. 2124.—When the primitive obligation, contracted with a penal clause, is of an indivisible thing, the penalty is forfeited by the default of any one of the heirs of the debtor, and it may be exacted, either wholly against him who has been in default, or against every one of the co-heirs for his part and portion, and in case of mortgage for the whole, they having their remedy against him by whose default the penalty was forfeited.

ART. 2125.—When the primitive obligation contracted under a penalty, is divisible, the penalty is incurred only by that one of the debtor's heirs who contravened the obligation, and only for the part for which he was liable in the principal obligation, no action lying against those who have executed it.

This rule has an exception, when the penal clause having been added in the intention that the payment should not be made partially, a co-heir has prevented the execution of the obligation for the whole.

In that case the entire penalty may be exacted of him, and against the other co-heirs only for their part, but the latter have their recourse against the former.

CHAPTER V.

OF THE MANNER IN WHICH OBLIGATIONS MAY BE EXTINGUISHED.

ART. 2126.—Obligations are extinguished :

By payment ;

9 L. 11.

By novation ;

By voluntary remission ;

4 L. 361.

By compensation ;

By confusion ;

By the loss of the thing ;

By nullity or rescission ;

By the effect of the dissolving condition, which has been explained in the preceding chapter ;

By prescription, which shall be treated of in a subsequent title.

SECTION I.—Of *Payment*.

ART. 2127.—By payment is meant, not only the delivery of a sum of money, when such is the obligation of the contract, but the performance of that which the parties respectively undertook, whether it be to give or to do.

ART. 2128.—He who is bound to do, or not to do, or to give, is indifferently called the obligor, or the debtor ; and he to whom the obligation is made, is in like manner without distinction called the obligee or the creditor.

§ 1.—*Of Payment or Performance in general.*

ART. 2129.—Every payment presupposes a debt; what has been paid without having been due, is subject to be reclaimed.

That cannot be reclaimed that has been voluntarily given in discharge of a natural obligation.

11 R. 502.

ART. 2130.—An obligation may be discharged by any person concerned in it, such as a co-obligee or a security.

The obligation may even be discharged by a third person no way concerned in it, provided that person act in the name and for the discharge of the debtor, or that, if he act in his own name, he be not subrogated to the rights of the creditor.

3 L. 479; 5 A. 48.

ART. 2131.—A third person may, for the advantage of the obligor, put the obligee in default, by offering to perform the obligation on the part of the debtor, even without his knowledge; but it must be for the advantage of the debtor, not merely to change the creditor.

ART. 2132.—The obligation of doing cannot be discharged by a third person against the will of the creditor, when it is the interest of the latter that it be fulfilled by the debtor himself.

ART. 2133.—But where the act to be done may as well be performed by the third person who offers to do it, as by the obligor, then it may be discharged by him, or the creditor may be put in default by his offer to perform it, always under the condition that some advantage may result to the debtor, or that the offer may be made at his request.

ART. 2134.—If the debtor give a thing in payment of his obligation, which he has no right to deliver, it does not discharge his obligation, and the owner of the thing given may reclaim it in the hands of the creditor, unless it be discharged by the payment of money, or the delivery of some of those things which are consumed in the use, and the creditor has used them, in which cases neither the money nor the things consumed can be reclaimed, and the payment will be good.

See 10 R. 481.

ART. 2135.—If money, or other stolen property, be given in payment, the payment is not good, and the owner may recover the amount paid.

ART. 2136.—The payment must be made to the creditor, or to some person having a power from him to receive it, or authorized by a court, or by law to receive it from him.

Payment made to a person not having power to receive it for the creditor is valid, if the creditor has ratified it, or has profited by it.

See 11 R. 270.

ART. 2137.—If the power be revoked, either expressly or by the death of the creditor, payment to the bearer of the power will discharge the debtor, provided he were ignorant of the revocation.

ART. 2138.—A power to receive payment is revoked, as well by such

change in the state of the creditor as renders him incapable himself of legally receiving, as by his death or express revocation; if he should become interdicted, or (if a woman), she should be married, the powers given before these changes took place, are void.

ART. 2139.—A payment made to an attorney at law, employed to sue for the payment, will discharge the debtor, although the attorney be not specially empowered to receive the debt.

1S L. 430; See 2 N. S. 202; 4 N. S. 145; 7 N. S. 34; 8 N. S. 234.

ART. 2140.—If the authority of him who gave the power ceases, the power is revoked. Thus a power given by a curator, an executor, or a tutor, is no longer valid, after they cease to exercise their trust.

ART. 2141.—Payments in general can legally be made only to the creditor, or some one empowered by him. The debtor however, is discharged by a payment made in good faith to one who is really not the creditor, and is not empowered by him in the following cases:

1. When the debt is due on an instrument in writing, payable to the bearer, or payable to order, and indorsed, or if not payable to the bearer, if it be assigned in blank, or to bearer, and the payment is made to one in possession of the original evidence of the debt;

2. When the person to whom the payment has been made, was at the time in possession of the evidence of the debt, under an order of a competent court, as syndic or trustee of creditors, as curator, executor, heir, or by virtue of any office or other trust, that apparently gives him the power to receive the payment.

3. When the debt accrues for rents or other incidents of the administration of real property, or for the sale or expenses relative to personal property, of which the person is in possession by virtue of any of the titles mentioned in the last preceding rule, or where he has been in the uninterrupted possession of such real property for more than one year under any other title.

See 17 L. 236; 7 N. S. 253; 4 L. 383.

ART. 2142.—A special power to sell includes a power to receive the price, unless the contrary appear from the power, or unless the power be only to sell on a credit, in which case the attorney has no right to receive the price.

See 2139.

ART. 2143.—Payment made to the creditor is not valid, if he is one of those whom the law has placed under an incapacity to receive it, unless the debtor prove that the payment was applied to some object of utility for the creditor; it is not sufficient if it was applied merely to contribute to his pleasure.

ART. 2144.—But if the incapacity to receive arose from the privation of civil rights by the effect of a sentence, then the payment is not good, although the payment were applied to the utility of the creditor

See 17 L. 236.

ART. 2145.—Payment made by a debtor to his creditor, to the prejudice of a seizure or an attachment, is not valid with regard to the creditors seizing or attaching; those may, according to their claims, oblige him to pay anew, and he has in that case alone recourse against the creditor.

6 A. 445.

ART. 2146.—The creditor cannot be constrained to receive any other thing than that which is due, although the value of the thing tendered be equal, or even greater.

ART. 2147.—But if the thing agreed to be delivered, be a specific object, and it be destroyed before the time agreed for its delivery, the debtor may be forced to give, and the creditor to receive, the value of this thing in money.

ART. 2148.—In the case provided for in the last preceding article, and in all other cases where the value of the thing to be delivered enters into the measure of damages, its price, or that sum for which others of the like quality could have been purchased at the time agreed on for the delivery, is to be the rule for calculating the value; or, if no time was stipulated, then the price, at the time of the demand, must be referred to.

ART. 2149.—The debtor cannot oblige the creditor to receive in part the payment of a debt, even divisible.

7 N. S. 519; 8 L. 536; 3 R. 492; 10 R. 25; See 5 N. S. 194; See 2107, 2612, 2624.

ART. 2150.—But if the sum due consists of several different debts, or of rents falling due at different times, the debtor may force the creditor to receive the payment of one of the debts, or of a single term of the rent; but a creditor is not obliged to receive the rent of a later term, when there is a former due.

ART. 2151.—The debtor of a certain and determinate matter is discharged by the delivery of the thing in the state in which it is at the time of delivery, provided that previously to the deterioration, he was not chargeable with delay.

ART. 2152.—If the debt be of a thing which is determined only by its species, the debtor, in order to his discharge, is not bound to deliver it of the best kind, but he cannot tender it of the worst.

ART. 2153.—The payment must be made in the place specified in the agreement. If the place be not thus specified, the payment, in case of a certain and determinate substance, must be made in the place where was, at the time of the agreement, the thing which is the object of it.

These two cases excepted, the payment must be made at the dwelling of the debtor.

3 L. 97.

ART. 2154.—The expenses attending the payment are at the charge of the debtor.

§ 2.—Of Payment with Subrogation.

ART. 2155.—Subrogation to the right of a creditor in favor of a third person who pays him, is either conventional or legal.

ART. 2156.—The subrogation is conventional:

1. When the creditor, receiving his payment from a third person, subrogates him in his rights, actions, privileges, and mortgages against the debtor; this subrogation must be expressed, and made at the same time as the payment;

See 17 L. 161.

2. When the debtor borrows a sum for the purpose of paying his debts, and intending to subrogate the lender in the rights of the creditor. To make this subrogation valid, it is necessary that the act of borrowing and the receipt be executed in presence of a notary and two witnesses; that, in the act of borrowing, it be declared that the sum was borrowed to make the payment, and that in the receipt it be declared that the payment has been with the money furnished for that purpose by the new creditor. That subrogation takes place independently of the will of the creditor.

11 L. 234; 13 L. 290, 380; 15 L. 385; 19 L. 235; 11 R. 270, 346; 9 R. 405, 414.

ART. 2157.—Subrogation takes place of right:

1. For the benefit of him who, being himself a creditor, pays another creditor, whose claim is preferable to his, by reason of his privileges or mortgages;

6 R. 323; 2 A. 450.

2. For the benefit of the purchaser of any immovable property, who employs the price of his purchase in paying the creditors to whom the hereditament was mortgaged;

15 L. 339; See 2536.

3. For the benefit of him who, being bound with others, or for others, for the payment of the debt, had an interest in discharging it;

11 L. 52; 15 L. 214, 351; 6 R. 323; 3 A. 66; See 3 L. 479; 17 L. 161.

4. For the benefit of the beneficiary heir, who has paid with his own funds the debts of the succession.

ART. 2158.—The subrogation established by the preceding articles, takes place as well against the securities, as against the debtors. It cannot injure the creditor, since, if he has been paid but in part, he may exercise his right for what remains due, in preference to him from whom he has received only a partial payment.

§ 3.—Of the Imputation of Payments.

ART. 2159.—The debtor of several debts has a right to declare, when he makes a payment, what debt he means to discharge.

ART. 2160.—The debtor of a debt which bears interest or produces rents, cannot, without the consent of the creditor, impute to the reduction of the capital any payment he may make, when there is interest or rent due.

10 R. 51; 2 A. 363, 520.

ART. 2161.—When the debtor of several debts has accepted a receipt, by which the creditor has imputed what he has received to one of the debts specially, the debtor can no longer require the imputation to be made to a different debt, unless there have been fraud or surprise on the part of the creditor.

5 A. 569; See 7 N. S. 220.

ART. 2162.—When the receipt bears no imputation, the payment

must be imputed to the debt, which the debtor had at the time most interest in discharging, of those that are equally due, otherwise to the debt which has fallen due, though less burdensome than those which are not yet payable.

If the debts be of a like nature, the imputation is made to the less burdensome; if all things are equal, it is made proportionally.

10 L. 232; 12 L. 1; 2 A. 363; 3 A. 351; 5 A. 569; See 10 L. 352.

§ 4.—*Of Tenders of Payment and Consignment.*

ART. 2163.—When the creditor refuses to receive his payment, the debtor may make him a real tender, and on the creditor's refusal to accept it, he may consign the thing or the sum tendered.

A real tender, followed by a consignment, exonerates the debtor; it has the same effect, with regard to him, as a payment, when it is validly made; and the thing thus consigned remains at the risk of the creditor.

6 A. 13; See 4 L. 94.

ART. 2164.—To make a real tender valid, it is necessary:

1. That it be made to the creditor having capacity to receive it;
2. That it be made by a person capable of paying;
3. That it be for the whole of the sum demanded, of the arrearages or interest due, for the liquidated costs, and for a sum towards the costs not liquidated, the deficit of which sum is hereafter to be made up;
4. That the term be expired, if it has been stipulated in favor of the creditor;
5. That the condition, on which the debt has been contracted, be fulfilled;
6. That the tender be made in the place agreed upon for the payment, or that, if there be no special agreement as to the place of payment, it be made either to the creditor himself, or at his dwelling, or at the house chosen for the execution of the agreement.

ART. 2165.—The mode in which a tender and consignment must be made, is pointed out in the laws regulating the practice of the courts.

§ 5.—*Of the Cession of Property.*

ART. 2166.—The surrender of property is the relinquishment that a debtor makes of all his property to his creditors, when he finds himself unable to pay his debts.

— See 9 R. 372.

ART. 2167.—The surrender of property is voluntary or forced.

ART. 2168.—The voluntary surrender of property is that which is made at the desire of the debtor himself.

The forced surrender is that which is ordered at the instance of the creditors of the debtor, or some of them, in cases provided for by law.

ART. 2169.—Both those kinds of surrender are subject to formalities, which are prescribed by special laws.

ART. 2170.—The voluntary surrender is a benefit, which the law grants to the honest but unfortunate debtor, by which he is permitted to

secure the liberty of his person by surrendering in a judicial manner, all his property to his creditors, any stipulation to the contrary notwithstanding.

ART. 2171.—The surrender does not give the property to the creditors; it only gives them the right of selling it for their benefit, and receiving the income of it, till sold.

Stat. 29th March, 1826, p. 136.—§ 2. From and after such cession and acceptance all the property of such insolvent debtor mentioned in said schedule shall be fully vested in his creditors, and shall not be liable to be seized, attached, taken or levied on, by virtue of any writ of seizure, attachment, or execution, issued against the property of the said insolvent debtor, and the syndic or syndics who may be appointed by the creditors shall take possession of, and be entitled to claim and recover all the said property, and to administer and sell the same, as is provided by the act to which this is a supplement. *Provided however*, that nothing in this act contained, shall be so construed as to prevent an insolvent debtor, at any time before the homologation, or the deliberation of the creditors, appointing syndics and fixing the manner of disposing of the property surrendered, from revoking the said cession, and taking back all his said property surrendered, all which he shall be authorized to do on his depositing in court a sum of money sufficient to cover all the debts due by him according to his said schedule, together with all the costs until then made and incurred: and provided also, that if, after all the creditors shall have been paid out of the property ceded as aforesaid, there remain a balance in the hands of the syndics, the said debtor shall be entitled to recover and receive from the said syndics the said balance.

2 L. 354.

ART. 2172.—The creditors cannot refuse the surrender made according to the forms ordained by law, unless in case of fraud on the part of the debtor.

It operates the discharge of the restraint of the debtor's person, and delivers him from actual imprisonment.

It also suspends all kinds of judicial process against the debtor.

2 L. 503; See 11 L. 65.

ART. 2173.—A cession of property discharges all the debts, which the debtor placed on his bilan, including those arising from offences and quasi-offences, provided a majority of his creditors in number, and who are also creditors for more than the half of the whole sum due by him, agree to such discharge. But if such consent be not obtained, any one of his creditors may afterwards force a new cession, on showing that the debtor has acquired property over and above what is necessary for his maintenance. But on such new cession, the creditors, who have become such since the first cession, must be paid in preference to the others.

10 R. 43; 11 R. 166; 3 A. 501; See 1 L. 174; 4 L. 44.

ART. 2174.—As the debtor preserves his ownership of the property surrendered, he may divest the creditors of their possession of the same, at any time before they have sold it, by paying the amount of his debts, with the expenses attending the cession.

See 2171 and amendment.

ART. 2175.—Any surplus, that may be in the hands of the creditors, or their syndics, or other agents, after paying the debts and expenses, must be paid over to the debtor.

ART. 2176.—The property surrendered forms a part of the succession of the debtor, if he should die before the sale; but the creditors are entitled to retain the possession and to sell, in the same manner as they were before the death of the debtor.

9 R. 219.

ART. 2177.—The creditors of those, in whose favor a cession or surrender of property has been made, even when they have a general mortgage, cannot enforce it against the property surrendered; but they may seize the credits against the ceded estate on execution, and in cases where such proceeding is allowed, may attach them.

ART. 2178.—The creditors can never prescribe by any lapse of time, so as to gain a property in the estate ceded.

ART. 2179.—The debtor is not obliged to comprehend in his surrender any property that is not subject to be seized and sold on execution against him, but, with this exception, all his property must be surrendered.

ART. 2180.—All sales of property ceded to creditors must be made on the same terms and under the same formalities that property seized on execution is sold; but the sale is made by the syndics, or some person appointed by them, at public auction.

Stat. 29th March, 1826, p. 136.—§ 3. The property ceded, excepting incorporeal rights, shall be sold by public auction, at such times and places, and upon such terms and conditions, as may be determined by the creditors, according to the provisions of the act to which this is a supplement: and that incorporeal rights, actions and credits may also be sold by public auction, by virtue only of an order of the court, before which the proceedings are depending, to be made upon the petition of the syndics, setting forth the reasons which may render such mode of disposition advisable.

7 N. S. 183; 3 A. 326.

SECTION II.—*Of Novation.*

ART. 2181.—Novation is a contract, consisting of two stipulations, one to extinguish an existing obligation, the other to substitute a new one in its place.

ART. 2182.—To constitute a novation, there must be, at the time it is made, a valid obligation on which it can operate, if the first obligation, which it is intended to replace by the new one, be void, or, if there be no such obligation, then the new obligation is of no effect.

ART. 2183.—The pre-existent obligation must be extinguished, otherwise there is no novation; if it be only modified in some parts, and any stipulation of the original obligation be suffered to remain, it is no novation.

See 1 I. 527.

ART. 2184.—All kinds of legal obligations are subject to novation.

ART. 2185.—Novation takes place in three ways :

1. When a debtor contracts a new debt to his creditor, which new debt is substituted to the old one, which is extinguished ;

1 A. 410.

2. When a new debtor is substituted to the old one, who is discharged by the creditor ;

16 L. 476.

3. When by the effect of a new engagement, a new creditor is substituted to the old one, with regard to whom the debtor is discharged.

ART. 2186.—Novation can be made only by persons capable of contracting ; it is not presumed ; the intention to make it must clearly result from the terms of the agreement, or by a full discharge of the original debt.

3 N. S. 145 ; 7 N. S. 177 ; 4 L. 477 ; 11 R. 9 ; 2 A. 188.

ART. 2187.—Novation by the substitution of a new debtor, may take place without the concurrence of the former debtor.

ART. 2188.—The delegation, by which a debtor gives to the creditor another debtor who obliges himself towards such creditor, does not operate a novation, unless the creditor has expressly declared that he intends to discharge his debtor who has made the delegation.

9 L. 216, 223 ; 16 L. 476 ; 1 R. 301 ; 11 R. 511 ; 4 A. 509.

ART. 2189.—The creditor, who has discharged the debtor by whom a delegation has been made, has no recourse against the debtor, if the person delegated becomes insolvent, unless that act contains an express reservation to that purpose, or unless the delegated person was in a state of open failure or insolvency at the time of the delegation.

1 R. 301.

ART. 2190.—The mere indication made by a debtor of a person who is to pay in his place, does not operate a novation.

The same is to be observed of the mere indication made by the creditor of a person who is to receive for him.

16 L. 476 ; 11 R. 511.

ART. 2191.—The privileges and mortgages of the former credit are not transferred to that which is substituted to it, unless the creditor has expressly reserved them.

ART. 2192.—When novation takes place by the substitution of a new debtor, the original privileges and mortgages of the creditor cannot be transferred on the property of the new debtor.

ART. 2193.—When novation takes place between the creditor and one of the debtors *in solido*, the privileges and mortgages of the former credit can be reserved only on the property of him who contracts the new debt.

ART. 2194.—By the novation made between the creditor and one of the debtors *in solido*, the co-debtors are discharged.

The novation that takes place with regard to the principal debtor, discharges the securities.

Nevertheless, if the creditor has required, in the first case, the accession of the co-debtors, or in the second, that of the securities, the for-

mer credit subsists, if the co-debtors or the securities refuse to accede to the new arrangement.

10 R. 281, 421; See 3082.

SECTION III.—*Of the Remission of the Debt.*

ART. 2195.—The remission of the debt is either conventional, when it is expressly granted to the debtor by a creditor having a capacity to alienate;

Or tacit, when the creditor voluntarily surrenders to his debtor the original title under private signature constituting the obligation.

4 L. 359; 1 A. 192.

ART. 2196.—The surrender of the original title under private signature to one of the debtors *in solido*, forms a presumption of the remission of the debt, or of its payment, in favor of his co-debtors; but proof may be adduced to the contrary.

ART. 2197.—The release or remission of a debt is presumed always to have been accepted by the debtor, and it cannot be revoked by the creditor.

ART. 2198.—The delivery to the debtor of the authenticated copy of a notarial act, by which the obligation is created, does not alone form a presumption of the release of the debt, but it may, when accompanied by other proof, form such presumption.

ART. 2199.—The remission or conventional discharge in favor of one of the co-debtors *in solido*, discharges all the others, unless the creditor has expressly reserved his right against the latter.

In the latter case, he cannot claim the debt without making a deduction of the part of him to whom he has made the remission.

2 A. 136.

ART. 2200.—The remission of the thing, given as a pledge, does not suffice to raise a presumption of the remission of the debt.

18 L. 414.

ART. 2201.—The remission or even conventional discharge granted to a principal debtor, discharges the securities.

That granted to the securities does not discharge the principal debtor;

That granted to one of the securities does not discharge the others.

ART. 2202.—What the creditor has received from one of the securities, in discharge of his suretyship, must be imputed to the debt, and goes towards the discharge of the principal debtor and the other securities.

SECTION IV.—*Of Compensation.*

ART. 2203.—When two persons are indebted to each other, there takes place between them a compensation that extinguishes both the debts, in the manner and cases hereafter expressed.

3 A. 47; 4 A. 157.

ART. 2204.—Compensation takes place of course by the mere operation of law, even unknown to the debtors; the two debts are reciprocally

extinguished, as soon as they exist simultaneously, to the amount of their respective sums.

8 L. 158; 10 R. 196; 12 R. 898.

ART. 2205.—Compensation takes place only between two debts, having equally for their object, a sum of money, or a certain quantity of consumable things of one and the same kind, and which are equally liquidated and demandable.

3 L. 511; 8 L. 158; 10 R. 45; 12 R. 898; 2 A. 546; 3 A. 617; 5 A. 160, 551.

ART. 2206.—The days of grace are no obstacle to the compensation.

ART. 2207.—Compensation takes place, whatever be the causes of either of the debts, except in case:

1. Of a demand of restitution of a thing of which the owner has been unjustly deprived;
2. Of a demand of restitution of a deposit and of a loan for use;
3. Of a debt which has for its cause, aliments declared not liable to seizure.

3 L. 511; 2 A. 24; 3 A. 514; 6 A. 46, 210.

ART. 2208.—The surety may oppose the compensation of what the creditor owes to the principal debtor.

But the principal debtor cannot oppose the compensation of what the creditor owes to the surety.

Neither can the debtor *in solido* oppose the compensation of what the creditor owes to his co-debtor.

ART. 2209.—The debtor, who has accepted purely and simply the transfer which a creditor has made of his rights to a third person, can no longer oppose to the latter the compensation which, before the acceptance, he might have opposed to the former.

As to the transfer which has not been accepted by the debtor, but which has been notified to him, it hinders only the compensation of credits posterior to that notification.

ART. 2210.—When the two debts are not payable both at one and the same place, the compensation of them cannot be opposed, without allowing for the expense of the remittance.

ART. 2211.—When there are several compensable debts, due by the same person, the same rules are observed for the compensation, as are established for imputation in article 2162.

ART. 2212.—Compensation cannot take place to the prejudice of the rights acquired by a third person; therefore, he, who being a debtor, is become creditor since the attachment made by a third person in his hands, cannot, in prejudice to the person seizing, oppose compensation.

ART. 2213.—He who has paid a debt which was of right extinguished by compensation, can no longer, in exercising the credit which he has not offered in compensation, avail himself, to the prejudice of a third person, of the privileges and mortgages that were attached to it, unless he had a just cause to be ignorant of the credit which was to compensate his debt.

SECTION V.—*Of Confusion.*

ART. 2214.—When the qualities of debtor and creditor are united in the same person, there arises a confusion of right, which extinguishes the two credits.

3 L. 552; See 4 R. 416; See 3252, 3374.

ART. 2215.—The confusion that takes place in the person of the principal debtor, avails his sureties.

That which takes place in the person of the surety, does not operate the extinction of the principal obligation.

That which takes place in the person of the creditor, avails his co-debtors *in solido*, only for the portion in which he was debtor.

3 L. 552.

SECTION VI.—*Of the Loss of the Thing Due.*

ART. 2216.—When the certain and determinate substance, which was the object of obligation, is destroyed, is rendered unsalable, or is lost, so that it is absolutely not known to exist, the obligation is extinguished, if the thing has been destroyed or lost, without the fault of the debtor, and before he was in delay.

Even when the debtor is in delay, if he has not taken upon himself fortuitous accidents, the obligation is extinguished, in case the thing might have equally been destroyed in the possession of the creditor, if it had been delivered to him.

The debtor is bound to prove the fortuitous accidents he alleges.

In whatever manner a thing stolen may have been destroyed or lost, its loss does not discharge the person, who carried it off, from the obligation of restoring its value.

ART. 2217.—When the thing is destroyed, rendered unsalable, or lost, without the fault of the debtor, he is bound, if he has any claim or action for indemnification, on account of that thing, to make over the same to the creditor.

SECTION VII.—*Of the Action of Nullity or of Rescission of Agreements.*

ART. 2218.—In all cases, in which the action of nullity or of rescission of an agreement, is not limited to a shorter period by a particular law, that action may be brought within ten years.

That time commences in case of violence, only from the day on which the violence has ceased; in case of error or deception, from the day on which either was discovered; and for acts executed by married women not authorized, from the day of the dissolution of the marriage or of the separation.

With regard to acts executed by persons under interdiction, the time commences only from the day that the interdiction is taken off; and with regard to acts executed by minors, only from the day on which they become of age.

7 R. 387; 2 A. 443; 3 A. 533; See 4 L. 365; 6 L. 161, 606; See 3507.

ART. 2219.—A simple lesion gives occasion to rescission, in favor of a minor not emancipated, against all sorts of engagements; and in favor of a minor emancipated, against all engagements exceeding the bounds of his capacity, as is laid down under the title of *minors, and of their tutorship*, &c.

ART. 2220.—A minor is not restituable (cannot be relieved against his engagements) on the plea of lesion, when it proceeds only from a casual and unforeseen event.

ART. 2221.—The mere declaration of majority made by a minor, is no obstacle to his restitution.

ART. 2222.—A minor, carrying on commerce, or being an artisan, is not restituable against the engagements into which he has entered in the way of his business or art.

15 L. 14; 2 R. 513; 2 A. 398.

ART. 2223.—A minor is not restituable against the engagements stipulated in his marriage contract, if they were entered into with the consent or in the presence of those whose consent is requisite for the validity of his marriage.

ART. 2224.—He is not restituable against the obligations resulting from his offences or quasi offences.

ART. 2225.—He cannot make void the engagement which he had subscribed in his minority, when once he has ratified it in his majority, whether that engagement was null in its form, or whether it was only subject to restitution.

6 R. 429.

ART. 2226.—When minors, persons under interdiction, or married women are admitted, in these qualities, to the benefit of restitution against their engagements, the reimbursement of what may have been paid, in consequence of those engagements, during minority, interdiction, or marriage, cannot be required of them, unless it be proved that what was paid, accrued to their benefit.

ART. 2227.—Persons of the age of majority cannot receive the benefit of restitution on account of lesion, except in cases and under conditions specially expressed by law.

ART. 2228.—When the formalities required with regard to minors or persons under interdiction, either for the alienation of immovable property, or in a partition of a succession, have been complied with, they are considered, as to these acts, as though they had executed them being of full age or before interdiction.

CHAPTER VI.

OF THE PROOF OF OBLIGATIONS AND OF THAT OF PAYMENT.

ART. 2229.—He who claims the execution of an obligation must prove it.

On the other hand, he who contends that he is exonerated, must prove the payment or the fact which has produced the extinction of the obligation.

ART. 2230.—The rule which concerns the literal proof, the testimonial proof, the presumption, the confession of the party, and the oath, are explained in the following sections.

SECTION I.—*Of the Literal Proof.*§ 1.—*Of Authentic Acts.*

ART. 2231.—The authentic act, as relates to contracts, is that which has been executed before a notary public or other officer authorized to execute such functions, in presence of two witnesses, free, male, and aged at least of fourteen years, or of three witnesses, if the party be blind. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument.

Stat. 2d March, 1852, p. 80.—§ 1. All proces verbals of sales of succession property, signed by the sheriff or auctioneer making the same, by the purchaser and two witnesses, are declared to be authentic acts for all intents and purposes.

16 L. 564; 10 R. 80; 1 A. 323; 2 A. 418; See 12 R. 210.

ART. 2232.—An act which is not authentic, through the incompetence or the incapacity of the officer, or through a defect of form, avails as a private writing, if it be signed by the parties.

12 R. 210; 2 A. 418; See 10 L. 304.

ART. 2233.—The authentic act is full proof of the agreement contained in it, against the contracting parties and their heirs or assigns, unless it be declared and proved a forgery.

3 L. 422.

ART. 2234.—The acknowledgment of payment, made in an authentic act, cannot be contested, under pretence of the exception of *non numeratâ pecuniâ*, which is hereby abolished.

11 L. 416; 13 L. 9; See 13 L. 347.

ART. 2235.—An act, whether authentic or under private signature, is proof between the parties, even of what is there expressed only in enunciative terms, provided the enunciation have a direct reference to the disposition.

Enunciations foreign to the disposition, can serve only as a commencement of proof.

13 L. 9; 16 L. 592.

ART. 2236.—Counter-letters can have no effect against creditors, or *bonâ fide* purchasers; they are valid as to all others.

13 L. 9.

§ 2.—*Of Acts under Private Signature.*

ART. 2237.—All acts may be executed under private signature, except such as positive laws have ordained to be passed in presence of a notary.

See 12 R. 210.

ART. 2238.—It is not necessary that those acts be written by the contracting parties, provided they be signed by them.

See 12 R. 210.

ART. 2239.—An act under private signature, acknowledged by the party against whom it is adduced, or legally held to be acknowledged, has, between those who have subscribed it, and their heirs and assigns, the same credit as an authentic act.

ART. 2240.—The person, against whom an act under private signature is produced, is obliged formally to avow or disavow his signature.

The heirs or assigns may simply declare, that they know not the handwriting or the signature of the person they represent.

1 A. 325; See 8 N. S. 297; 1 L. 486.

ART. 2241.—If the party disavow the signature, or the heirs or other representatives declare that they do not know it, it must be proved by witnesses or comparison, as in other cases.

9 L. 563; 13 L. 142; 15 L. 179; 2 A. 217.

ART. 2242.—Sales or exchanges of real property and slaves, by instruments made under private signature, are valid against *bonâ fide* purchasers and creditors, only from the day on which they are registered in the office of a notary, or from the time of the actual delivery of the thing sold or exchanged.

8 N. S. 186; 3 L. 160; 16 L. 433, 442, 454; 13 L. 17; 12 R. 210; 1 A. 249; 2 A. 912; See 1771, 2417

ART. 2243.—Sales or exchanges of personal property are void against *bonâ fide* purchasers and creditors, unless possession is given before such *bonâ fide* purchaser or creditor acquires his right by possession. What is a delivery of possession depends on the nature of the property; it may be constructive or actual; the delivery of the key of a store in which it is contained, or an order accepted by the person in whose custody it is held, if at the order of the vendor, is good evidence of delivery.

3 M. 362; 4 M. 25; 7 M. 24; 9 M. 403; 12 L. 375; 1 R. 26; 3 R. 331; 12 R. 51; 1 A. 59.

ART. 2244.—The books of merchants cannot be given in evidence in their favor; they are good evidence against them, but if used as evidence, the whole must be taken together.

3 M. 188; 2 N. S. 509; 4 N. S. 383; 12 R. 407; 2 A. 24.

ART. 2245.—Domestic books and papers are no proof in favor of him who has written them; they are proofs against him:

1. In all cases where they formally declare a payment received;
2. When they contain an express mention that the minute was made to supply the want of a title, in favor of him for whose advantage they declare that an obligation was made.

ART. 2246.—What is written by the creditor at the foot, in the margin, or on the back of the title, that has always remained in his possession, though it be neither signed nor dated by him, is good evidence, when it tends to establish the discharge of the debtor.

In like manner, what is written by the creditor on the back, in the margin, or at the foot of a duplicate of a title, or of a receipt, is evidence, provided that duplicate be in the hands of the debtor.

§ 3.—Of Copies of Titles.

ART. 2247.—The copies of the acts, which are certified true copies from the originals by the notaries who are the depositaries of such originals, make proof of what is contained in the originals, unless it be proved that such copies are incorrect.

16 L. 332.

Stat. 22d, April, 1853. No. 151.—An Act regulating the duties of Notaries, without the limits of the City of New Orleans.—§ 1. From and after the passage of this act, it shall be the duty of all notaries public within this State, without the limits of the city of New Orleans, to deposit in the office of the parish recorders of the parish, in which they may be respectively commissioned, within fifteen days at farthest, after the same shall have been passed, the original of all acts passed before said notaries, and in the order of their respective dates, first making a careful record of said acts in their record books: Provided, that the foregoing shall not be construed as embracing inventories or partitions or any other act required by law to be performed by them under any order of court, but the original of all such acts, without being recorded, shall be returned to the court from which the order issued.

§ 2. Said acts, when thus deposited in the office of the parish recorder, shall form a part of the archives of the same, and shall immediately be recorded by him as follows: If the act contains a conveyance of real estate or slaves without a mortgage, in a book of conveyances to be kept by the recorder, if such act contains a conveyance of real estate or slaves, together with a mortgage, in the aforesaid book of conveyances, and also in a book of conventional mortgages to be kept by such recorder, all acts required by law to be recorded except those acts hereinabove set forth, shall be recorded according to the provisions of the laws now in force, and all other acts in a "book of miscellaneous acts," also to be kept by such recorder, and it shall be the duty of said recorder to grant copies of the original acts deposited with him as aforesaid, under his signature and seal of office, which certified copy shall be considered legal evidence of the contents of the original acts.

§ 3. It shall be the duty of the recorder to indorse, on the back of each act transmitted to him, the time such act was received by the recorder, and to record the same without delay in the books above prescribed, in the order in which they were received; and said acts shall have effect against third persons, only from the date of their being deposited in the office of the parish recorder.

§ 4. All notaries without the limits of the city of New Orleans, who may contravene the provisions of the preceding sections, shall be liable to a fine of one hundred dollars for each infraction of the same, to be recovered before any court of competent jurisdiction, one-half for the benefit of the informer, and the other half for the use of the State.

§ 5. Within six months from the passage of this act, it shall be the duty of all said notaries to have filed, in the same manner as above specified, the originals of all acts now on record in their several offices, without recording the same.

§ 6. All laws, or parts of laws, contrary to this act, be, and the same are hereby, repealed.

ART. 2248.—When the original titles or records are no longer in

being, copies are good proof, and supply the want of the original, when they are certified as being conformable to the record, by the notary who has received it, or by one of his successors, or by any other public officer, with whom the record was deposited, and who had authority to give certified copies of it, provided the loss of the original be previously proved.

* See 6 N. S. 203; 7 N. S. 550; See 5 N. S. 175.

ART. 2249.—When an original title, by authentic act, or by private signature duly acknowledged, has been recorded in any public office, by an officer duly authorized, either by the laws of this State, or of the United States, to make such record, the copy of such record, duly authenticated, shall be received in evidence, on proving the loss of the original, or showing circumstances supported by the oath of the party, to render such loss probable.

13 L. 536; See 5 N. S. 175.

ART. 2250.—The record of an act purporting to be a sale or exchange of real property, shall not have effect against creditors or *bona fide* purchasers, unless, previous to its being recorded, it was acknowledged by the party, or proved by the oath of one of the subscribing witnesses, and the certificate of such acknowledgment be signed by a judge or notary, and recorded with the instrument.

12 R. 210.

§ 4. Of Recognitive and Confirmative Acts.

ART. 2251.—Recognitive acts do not dispense with the exhibition of the primordial title, unless its tenor be there specially set forth.

Whatever they contain over and above the primordial title, or different from it, is of no effect.

Nevertheless, if there be several recognitions conformable, supported by possession, one of them being dated thirty years back, the creditor may dispense with the exhibition of the primordial title.

8 L. 141.

ART. 2252.—The act of confirmation or ratification of an obligation, against which the law admits the action of nullity or rescission, is valid only when it contains the substance of that obligation, the mention of the motive of the action of rescission, and the intention of supplying the defect on which that action is founded.

13 L. 159; 1 R. 457, 459; 11 R. 98; 6 A. 53, 55.

In default of an act of confirmation or ratification, it is sufficient that the obligation be voluntarily executed, subsequently to the period at which the obligation could have been validly confirmed or ratified.

2 R. 1; 4 A. 148.

The confirmation, ratification, or voluntary execution in due form, and at the period fixed by law, involves a renunciation of the means and exceptions that might be opposed to the act, without prejudice however to the right of persons not parties to it.

4 R. 127; See 10 M. 726; 6 L. 604; 17 L. 455; See 12 R. 221; 6 L. 725.

ART. 2253.—The donor cannot, by any confirmative act, supply the defects of a donation *inter vivos* null in form; it must be executed again in legal form.

4 R. 157.

ART. 2254.—The confirmation, ratification, or voluntary execution of a donation by the heirs or assigns of the donor, after his decease, involves their renunciation to oppose either defects of forms or any other exceptions.

4 R. 157; 3 A. 522.

SECTION II.—Of Testimonial Proof.

ART. 2255.—Every transfer of immovable property or slaves must be in writing; but if a verbal sale, or other disposition of such property, be made, it shall be good against the vendor, as well as against the vendee, who confesses it when interrogated on oath, provided actual delivery has been made of the immovable property or slaves thus sold.

5 M. 442; 1 N. S. 456; 2 L. 446, 593; 3 L. 118, 460; 4 L. 4, 22, 169; 377; 5 L. 460; 13 L. 264; 15 L. 493; 18 L. 595; 6 R. 428; 8 R. 102; 10 R. 466; 1 A. 459; 4 A. 103; See 1757, 2584, 2415, 2961.

ART. 2256.—Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them, or since.

6 M. 428; 8 N. S. 542; 2 L. 446; 3 L. 460; 4 L. 1, 169; 5 L. 279; 10 L. 205, 209; 13 L. 133, 136; 16 L. 130; 17 L. 369; 1 R. 101; 3 R. 57, 441; 4 R. 508; 5 R. 111; 10 R. 466; 11 R. 270; 3 A. 153, 193, 492, 600; 6 A. 589; See 4 L. 29; See 2255.

ART. 2257.—All agreements relative to personal property, and all contracts for the payment of money, where the value does not exceed five hundred dollars, which are not reduced to writing, may be proved by any other competent evidence; such contracts or agreements, above five hundred dollars in value, must be proved at least by one credible witness, and other corroborating circumstances.

8 N. S. 457; 3 L. 213; 5 L. 268; 17 L. 344, 459; 1 R. 51; 2 R. 304, 4 R. 157, 468; 5 R. 491; 1 A. 29, 459; 2 A. 138, 536; See 7 L. 104; 14 L. 346.

ART. 2258.—When an instrument in writing, containing obligations which the party wishes to enforce, has been lost or destroyed, by accident or force, evidence may be given of its contents, provided the party show the loss, either by direct testimony, or by such circumstances, supported by the oath of the party, as render the loss probable; and in this case, the judge may, if required, order reasonable security to be given to indemnify the party against the appearance of the instrument, in case circumstances render it necessary.

7 L. 206; 12 L. 166; 13 L. 216; 1 R. 214; 2 R. 112, 128; 4 R. 157; 2 A. 754, 1012; 3 A. 227.

ART. 2259.—In every case where a lost instrument is made the foundation of a suit or defence, it must appear that the loss has been advertised within a reasonable time, in a public paper, and proper means taken to recover the possession of the instrument.

8 M. 144; 7 L. 206; 8 L. 516; 13 L. 213; 16 L. 473; 1 R. 214; 4 R. 157; 2 R. 112, 128; 2 A. 754, 829, 976; 3 A. 227.

ART. 2260.—The competent witness of any covenant or fact, whatever it may be, in civil matters, is that who is above the age of fourteen years complete, of a sound mind, free or enfranchised, and not one of those whom the law deems infamous; he must besides be not interested, neither directly nor indirectly, in the cause.

4 L. 200 19 L. 584, 590; 4 R. 31; 6 A. 292; 3 L. 270; 10 R. 453.

The husband cannot be a witness either for or against his wife, nor the wife for or against her husband ; neither can ascendants with respect to their descendants, nor descendants with respect to their ascendants.

13 L. 18; 12 R. 639; 2 A. 345, 480; 3 A. 142, 174; See 8 M. 363; 12 M. 289; 2 N. S. 455; 5 N. S. 5; 4 232, L. 526; 11 L. 269; 6 A. 192; See also 7 L. 234.

Stat. 28th January, 1828, p. 12.—Whereas, doubts have arisen, whether the act, the provisions of which this act is intended to revive, has not been abrogated by the two thousand two hundred and sixtieth article of the new Civil Code, by which it is enacted, that to be competent witness of any covenant of fact, in civil matters, one must not be interested either directly or indirectly in the cause; and, in order to avoid any difficulty on that subject,

Be it enacted, &c., That the provisions of the above cited act be, and are, hereby revived, and that, therefore, the interest that any witness may have as a member of a corporation, civil or religious, shall not be considered as a sufficient reason for excluding his testimony in a case in which the said corporation is a party, unless the said witness have in the cause a particular interest, distinct from that which he has in common with the other members of the said corporation; provided, however, that the interest which the stockholders of any bank, insurance companies, and other moneyed institutions of that kind, shall be considered as a sufficient reason not to admit the said stockholders as competent witnesses in any case where the said banks and other moneyed institutions may be parties.

ART. 2261.—The circumstance of the witness being a relation in the collateral line, as far as the fourth degree inclusively, of one of the parties interested in the cause, or engaged in the actual service or salary of one of the said parties, or a free colored person, is not a sufficient cause to consider the witness as incompetent, but may, according to circumstances, diminish the extent of his credibility.

4 L. 200; 4 R. 157; 12 R. 639.

ART. 2262.—No attorney or counsellor at law shall give evidence of any thing that has been confided to him by his client, without the consent of such client; but his being employed as a counsellor or attorney, does not disqualify him from being a witness in the cause in which he is employed.

7 L. 207; 1 R. 157; See 7 N. S. 177.

SECTION III.—Of Presumptions.

ART. 2263.—Presumptions are consequences which the law or the judge draws from a known fact to a fact unknown.

4 R. 157.

§ 1.—Of Presumptions established by Law.

ART. 2264.—Legal presumption is that which is attached, by a special law to certain acts or to certain facts; such are:

1. Acts which the law declares null, as presumed to have been made to evade its provisions, from their very quality ;
2. Cases in which the law declares that the property or discharge results from certain determinate circumstances ;
3. The authority which the law attributes to the thing adjudged ;
4. The weight which the law attaches to the confession of the party, or to his oath.

4 R. 157 ; 5 A. 719.

ART. 2265.—The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same ; the demand must be founded on the same cause of action ; the demand must be between the same parties, and formed by them against each other in the same quality.

14 L. 140 ; 4 R. 157 ; 3 R. 69, 171 ; 10 R. 361 ; 1 A. 29, 92 ; 3 A. 167, 202.

ART. 2266.—Legal presumption dispenses with all other proof, in favor of him for whom it exists.

No proof is admitted against the presumption of the law, when, on the strength of that presumption, it annuls certain acts, or refuses a judicial action, unless it has reserved the contrary proof, and saving what will be said on the judicial confession.

§ 2. *Of Presumptions not established by Law.*

ART. 2267.—Presumptions not established by law are left to the judgment and discretion of the judge, who ought to admit none but weighty, precise and consistent presumptions, and only in cases where the law admits testimonial proof, unless the act be attacked on account of fraud or deceit.

5 L. 450 ; 4 R. 157 ; 3 A. 101, 600.

SECTION IV.—*Of the Confession of the Party.*

ART. 2268.—The confession, which is opposed to a party, is either extra-judicial or judicial.

4 R. 157.

ART. 2269.—The allegation of extra-judicial confession, merely verbal, is useless in all cases of a demand, in support of which testimonial proof would be inadmissible.

5 L. 450 ; 4 R. 157.

ART. 2270.—The judicial confession is the declaration which the party, or his special attorney in fact, makes in a judicial proceeding.

It amounts to full proof against him who has made it ;

It cannot be divided against him ;

It cannot be revoked, unless it be proved to have been made through an error in fact ;

It cannot be revoked on a pretence of an error in law.

13 L. 10 ; 4 R. 157 ; 6 A. 397, 719 ; See 5 L. 55.

TITLE V.

OF QUASI-CONTRACTS, AND OF OFFENCES AND QUASI-OFFENCES.

ART. 2271.—Certain obligations are contracted without any agreement, either on the part of the person bound, or of him in whose favor the obligation takes place.

Some are imposed by the sole authority of the law, others from an act done by the party obliged, or in his favor.

The first are such engagements as result from tutorship, curatorship, neighborhood, common property; the acquisition of an inheritance, and other cases of a like nature.

The obligations which arise from a fact, personal to him who is bound, or relative to him, either result from quasi-contracts, or from offences and quasi-offences. They are the subject of the present title.

CHAPTER I.

OF QUASI-CONTRACTS.

ART. 2272.—Quasi-contracts are the lawful and purely voluntary act of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties.

ART. 2273.—All acts, from which there results an obligation without any agreement, in the manner expressed in the preceding article, form quasi-contracts. But there are two species principally which give rise to them, to wit: The transaction of another's business, and the payment of a thing not due.

See 1 A. 379.

ART. 2274.—When a man undertakes, of his own accord, to manage the affairs of another, whether the owner be acquainted with the undertaking, or ignorant of it, the person assuming the agency, contracts the tacit engagement to continue it and to complete it, until the owner shall be in a condition to attend to it himself; he assumes also the payment of the expenses attending the business.

He incurs all the obligations which would result from an express agency with which he might have been invested by the proprietor.

ART. 2275.—He who has taken upon himself the management of some particular affair, is not bound to manage others unconnected with that.

ART. 2276.—The duties he has undertaken do not cease, even if the person, for whom he acts, die previous to the business being terminated; they continue until the heir can take upon himself the direction of it.

ART. 2277.—In managing the business, he is obliged to use all the care of a prudent administrator.

Yet, where circumstances of friendship or of necessity have induced a person to undertake the management, that consideration may authorize the judge to mitigate the damages which may arise from the faults or the negligence of the manager.

ART. 2278.—Equity obliges the proprietor, whose business has been well managed, to comply with the engagements contracted by the manager, in his name; to indemnify the manager in all the personal engagements he has contracted; and to reimburse him all useful and necessary expenses.

1 R. 149; 2 R. 63.

ART. 2279.—He who receives what is not due to him, whether he receives it through error, or knowingly, obliges himself to restore it to him from whom he has unduly received it.

7 R. 522; 1 A. 379; 3 A. 409; See 12 R. 283.

ART. 2280.—He who has paid through mistake, believing himself a debtor, may reclaim what he has paid.

2 L. 128; 5 R. 101; 7 R. 522; 9 R. 314; 11 R. 502; 2 A. 723; 3 A. 409; See 12 R. 283.

ART. 2281.—To acquire this right, it is necessary that the thing paid be not due in any manner, either civilly or naturally. A natural obligation to pay will be sufficient to prevent the recovery.

5 R. 101; 7 R. 523; 12 R. 283; 2 A. 723; 3 A. 409; See 17 L. 386; 7 R. 334; 9 R. 324; 4 A. 550; 5 A. 15.

ART. 2282.—A thing not due is that which is paid on the supposition of an obligation which did not exist, or from which a person has been released.

5 R. 101; See 12 R. 283.

ART. 2283.—That which has been paid in virtue of a void title, it is also considered as not due.

3 A. 409.

ART. 2284.—The payment from which we might have been relieved by an exception that would extinguish the debt, affords ground for claiming restitution.

2 L. 423; See 12 R. 283.

ART. 2285.—But this exception must be such that it shall extinguish even all natural obligation. Thus he who, having the power to plead prescription, shall have made payment, cannot claim restitution.

ART. 2286.—It is considered that a thing has been paid, when not due, if the payment was made by virtue of an agreement, the effect of which is suspended by a condition, the event of which is uncertain.

ART. 2287.—This principle must not be extended to things due on a day certain, nor to conditions which must certainly happen.

ART. 2288.—He who, through mistake, has paid the debt of another to whom he believed himself indebted, has a claim to restitution from the creditor.

But this right ceases, if, in consequence of the payment, the creditor has destroyed or parted with his title; the recourse still remains to the person paying against the true debtor.

1 R. 272.

ART. 2289.—If there be any want of good faith on the part of him who has received, he is bound to restore, not only the capital, but also the interest on the proceeds from the day of the payment.

ART. 2290.—If the thing unduly received is an immovable property or a corporeal movable, he who has received it, is bound to restore it in kind, if it remain, or its value, if it be destroyed or injured by his fault; he is even answerable for its loss by fortuitous event, if he has received it in bad faith.

6 L. 277.

ART. 2291.—If he who has received *bona fide*, has sold the thing, he is bound to restore only the price of the sale.

If he has received in bad faith, he is bound, besides this restitution, to indemnify fully the person who has paid.

4 A. 144.

ART. 2292.—He to whom property is restored, must refund to the person who possessed it, even in bad faith, all he had necessarily expended for the preservation of the property.

6 N. S. 616; 4 A. 193.

ART. 2293.—All persons, such even as are incapable of consent, may, by the quasi-contract, resulting from the act of a third person, become either the object or the subject of an obligation, because the use of reason, although necessary on the part of the person whose act forms the quasi-contract, is not requisite in those by whom, or in whose favor, the obligations resulting from the act, are contracted.

CHAPTER II.

OF OFFENCES AND QUASI-OFFENCES.

ART. 2294.—Every act whatever of man, that causes damage to another, obliges him, by whose fault it happened, to repair it.

12 L. 581; 16 L. 389; 17 L. 571; 5 R. 70, 116, 277; 8 R. 45, 51; 12 R. 40, 162; 1 A. 389; 2 A. 143; 4 A. 79, 144; 6 A. 496; See 6 L. 737; 19 L. 416; 6 R. 382; 8 R. 428; 9 R. 367; 12 R. 20; 4 A. 440; See 1928; 6 N. S. 668.

ART. 2295.—Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill.

17 L. 571; 1 R. 389; 5 R. 70, 116; 8 R. 45, 51; 12 R. 40; 2 A. 143; 6 A. 95; See 6 L. 737.

ART. 2296.—We are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody. This, however, is to be understood with the following modifications.

Stat. 25th March, 1828, p. 160.—§ 23. From and after the passage of this act, no client or other person shall be held to be liable or responsible for any slanderous or libellous words uttered by his attorney at law, but attorneys at law shall be liable and responsible themselves for any slanderous or libellous words by them uttered, any law to the contrary notwithstanding.

9 L. 446.

ART. 2297.—The father, or after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons.

The same responsibility attaches to the tutors and curators of minors.

9 L. 446; 5 R. 70; See 19 L. 416.

ART. 2298.—The curators of insane persons are answerable for the damage occasioned by those under their care.

5 R. 70.

ART. 2299.—Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed;

Teachers and artisans, for the damage caused by their scholars or apprentices, while under their superintendence.

In the above cases, responsibility only attaches, when the masters or employers, teachers and artisans, might have prevented the act which caused the damage, and have not done it.

8 L. 33, 539; 10 L. 583, 585; 15 L. 169; 17 L. 541; 1 R. 173; 5 R. 113, 133; 2 A. 406; See 13 L. 491.]

ART. 2300.—The masters of slaves are responsible for the damage occasioned by them; the master, however, has the right, as established under the title of *master and servant*, of abandoning his slave in discharge of that responsibility.

5 L. 343; 13 L. 491; 5 R. 711; 10 R. 202; 2 A. 406; 6 A. 476.

ART. 2301.—The owner of an animal is answerable for the damage he has caused; but if the animal had been lost, or had strayed more than a day, he may discharge himself from this responsibility, by abandoning him to the person who has sustained the injury; except where the master has turned loose a dangerous or noxious animal; for then he must pay for all the harm done, without being allowed to make the abandonment.

5 R. 711.

ART. 2302.—The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair, or when it is the result of a vice in its original construction.

5 R. 711.

ART. 2303.—The damage caused is not always estimated at the exact value of the thing destroyed or injured; it may be reduced according to circumstances, if the owner of the thing has exposed it imprudently.

5 R. 711.

ART. 2304.—He who causes another person to do an unlawful act, or assists or encourages in the commission of it, is answerable, jointly with that person, for the damage caused by such act.

Stat. 19th February, 1844, p. 14.—That article two thousand three hundred and four of the Civil Code be and it is hereby so amended as to make the English of said article correspond with the French, and so as to make co-trespassers liable *in solido*.

16 L. 119; 1 R. 75; 7 R. 203; 12 R. 20; 3 A. 670.

TITLE VI.

OF THE MARRIAGE CONTRACT, AND OF THE RESPECTIVE RIGHTS
OF THE PARTIES IN RELATION TO THEIR PROPERTY

CHAPTER I.

GENERAL DISPOSITIONS.

ART. 2305.—In relation to property, the law only regulates the conjugal association, in default of particular agreements, which the parties are at liberty to stipulate as they please, provided they be not contrary to good morals, and under the modifications hereafter prescribed.

11 L. 27; See 2778.

ART. 2306.—Husband and wife can in no case enter into any agreement or make any renunciation, the object of which would be to alter the legal order of descents, either with respect to themselves in what concerns the inheritance of their children or posterity, or with respect to their children between themselves, without any prejudice to the donations *inter vivos* or *mortis causa*, which may take place according to the formalities and in the cases determined by this code.

11 L. 27.

ART. 2307.—Neither can husband and wife derogate by their matrimonial agreement from the rights resulting from the power of the husband over the person of his wife and children, or which belong to the husband as the head of the family, nor from the rights granted to the surviving husband or wife by the title of *father and child*, and by the title of *minors, of their tutorship, &c.*, nor from the prohibitory dispositions of this code.

11 L. 27.

ART. 2308.—Every matrimonial agreement must be made by an act before a notary and two witnesses.

The practice of marriage agreement under private signature is abrogated.

16 L. 273; 5 A. 321; See 15 L. 565.

ART. 2309.—Every matrimonial agreement can be altered by the husband and wife jointly, before the celebration of marriage; but it cannot be altered after the celebration.

2 L. 268.

ART. 2310.—The minor, who is capable of contracting matrimony, may give his consent to any agreement which their contract is susceptible of, and the agreement entered into and the donations he has made by the same, are valid, provided that, if he be not emancipated, he has been assisted in the agreement by those persons whose consent is necessary to his marriage.

ART. 2311.—The most ordinary conventions in marriage contracts, are the settlement of the dowry and the various donations which the husband and wife may make to each other, either reciprocally or the one

to the other, or which they may receive from others, in consideration of the marriage.

ART. 2312.—The partnership, or community of acquets or gains, needs not to be stipulated; it exists by operation of law, in all cases where there is no stipulation to the contrary.

But the parties may modify or limit it; they may even agree that it shall not exist.

2 L. 269.

ART. 2313.—From the various conventions which are customary in marriage contracts, or which are a consequence of the marriage, result various distinctions with respect to the estate which may be the object of these conventions.

ART. 2314.—The property of married persons is divided into separate property and common property.

Separate property is that which either party brings in marriage, or acquires during the marriage, by inheritance or by donation made to him or her particularly.

Common property is that which is acquired by the husband and wife, during marriage, in any manner different from that above declared.

10 L. 172.

ART. 2315.—The separate property of the wife is divided into dotal and extra-dotal.

Dotal property is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment.

Extra-dotal property, otherwise called paraphernal property, is that which forms no part of the dowry.

17 L. 299; See 1 L. 201.

CHAPTER II.

OF THE VARIOUS KINDS OF MATRIMONIAL AGREEMENTS.

SECTION I.—Of Donations made in consideration of Marriage.

ART. 2316.—Husband and wife may, by their marriage contract, make reciprocally or one to the other, or receive from other persons, in consideration of their marriage, every kind of donations, according to the rules and under the modifications prescribed in the title of *donations inter vivos and mortis causa*.

See 15 L. 565.

SECTION II.—Of Dowry or Marriage Portion.

ART. 2317.—By dowry is meant the effects which the wife brings to the husband to support the expenses of marriage.

10 R. 74; See 2 L. 538; 4 L. 554, 558; 13 L. 23; 16 L. 271.

ART. 2318.—Whatever, in the marriage contract, is declared to belong to the wife, or to be given to her on account of the marriage, by other persons than the husband, is part of the dowry, unless there be a stipulation to the contrary.

10 R. 74; 5 A. 142

ART. 2319.—The settlement of the dowry may include all the present and future effects of the wife, or her present effects only, or a part of her present and future effects, or even an individual object.

The constitution, in general terms, of all the effects of the wife, does not include her future effects.

ART. 2320.—Dowry cannot be settled, nor can it even be increased during the marriage.

ART. 2321.—Dowry can be settled either by the wife herself, or by her father or mother or other ascendants, or by other relations, and even by strangers.

10 R. 74.

ART. 2322.—If the father or mother settle jointly a dowry, without distinguishing the part of each, it shall be supposed to be constituted by equal portions.

If the dowry be settled by the father alone, for paternal and maternal rights, the mother, although present to the contract, shall not be obliged, and the father alone shall remain answerable for the whole of the dowry.

ART. 2323.—If the survivor, either father or mother, settles a dowry for paternal and maternal effects, without specifying the portions, the dowry shall be first taken out of the rights of the future husband or wife, out of the estate of the deceased husband or wife, and the rest out of the estate of the person who settled the dowry.

ART. 2324.—Although the daughter, who has received a dowry from her father and mother, may have effects belonging to her, which they enjoy, the dowry shall be taken out of the estate of the person settling the dowry, unless there be a stipulation to the contrary.

ART. 2325.—Those who settle a dowry, are bound to the warranty of the things thus settled.

ART. 2326.—The interests of the dowry begin, of right, from the day of the marriage, against those who have promised the same, although there may be time given for the payment, unless there be a contrary stipulation.

6 L. 762.

ART. 2327.—The dowry is given to the husband for him to enjoy the same as long as the marriage shall last.

2 R. 513; 10 R. 74.

ART. 2328.—The action, which the husband has to recover the dowry from those who have settled the same, is prescribed against by the same space of time as all other personal actions.

ART. 2329.—The income or proceeds of the dowry belong to the husband, and are intended to help him to support the charges of the matrimony, such as the maintenance of the husband and wife, that of their children, and other expenses which the husband deems proper.

2 R. 513; 3 R. 329.

ART. 2330.—The husband alone has the administration of the dowry, and his wife cannot deprive him of it; he may act alone in a court of justice, for the preservation or recovery of the dowry, against such as either owe or detain the same, but this does not prevent the wife from remaining the proprietor of the effects which she brought as her dowry.

13 L. 431; 2 R. 513; 3 R. 329.

ART. 2331.—In case, however, of the husband's absence or neglect to sue for the dotal effects of the wife, she may sue for them herself, having first been authorized by the proper judge.

ART. 2332.—It may likewise be stipulated by the marriage contract that the wife shall receive annually, upon her own acquittances, a part of her revenue, for her maintenance and personal wants.

ART. 2333.—The husband is not bound to give security upon his receiving the dowry, unless he has been bound to do so by the marriage contract.

ART. 2334.—If the dowry, or part of it, should consist in movable effects, valued by the marriage contract without declaring that the estimated value of the same does not constitute a sale, the husband becomes the proprietor of such movable effects, and owes nothing but the estimated value of the same.

2 R. 513.

ART. 2335.—The estimated value of slaves, settled as dowry, does not transfer the property of the same to the husband, unless there be an express declaration to that effect.

The property of dotal immovables, whether valued or not, can never be transferred to the husband, even by express agreement.

12 L. 283; See 2346.

ART. 2336.—An immovable, bought with the dotal funds, is dotal.

It is the same with respect to the immovable given in payment of a dowry settled in money.

8 N. S. 192; 17 L. 300.

ART. 2337.—Immovables, settled as a dowry, can be sold or mortgaged, during the marriage, neither by the husband nor the wife, nor by both together, except as is hereinafter expressed.

8 L. 130; 3 R. 329; 4 R. 453; 8 R. 457; 2 A. 771, 834.

ART. 2338.—The wife may, with the authorization of her husband, or, on his refusal, with the authorization of the judge, give her dotal effects for the establishment of the children she may have by a former marriage; but if she be authorized only by the judge, she is bound to reserve the enjoyment to her husband.

ART. 2339.—She may likewise, with the authorization of her husband, give her dotal effects for the establishment of their common children.

ART. 2340.—Immovables, settled as dowry, may be alienated with the wife's consent, when the alienation of the same has been allowed by the marriage contract; but their value must be reinvested in other immovables.

ART. 2341.—Such immovable may be likewise sold, with the authorization of the judge, at public auction, after three advertisements or publications in the usual places or in the newspapers, for the purpose of liberating from jail either husband or wife; of supplying the family with food, in the cases provided for under the title of *father and child*; of paying the debts of the wife or of those who settled the dowry, when such debts are of a certain date prior to the marriage contract; or for the purpose of making heavy repairs indispensably necessary for the preservation of the immovables settled as a dowry; and in fine, when the

immovable is held undivided with a third person, and the same is ascertained not to be susceptible of being divided.

In all such cases, what remains unemployed, out of the proceeds of the sale, above the necessities which have been the occasion of the sale, shall remain dotal effects, and shall be laid out as such to the benefit of the wife.

1 N. S. 463; 12 L. 172; 17 L. 296; 19 L. 574; See 1263, 1265, 1304.

ART. 2342.—If except as above expressed, the wife or husband, or both jointly alienate the dotal estate, the wife or her heirs may cause the alienation to be set aside after the dissolution of the marriage; and no prescription shall run, during the marriage, in bar of this right. The wife shall have the same right, after the separation of property.

8 R. 457; 2 A. 771.

ART. 2343.—Immovables, which are a part of the dowry, and which are not declared by the marriage contract liable to be alienated, are imprescriptible during the marriage; they become prescriptible after the separation of goods.

ART. 2344.—With respect to all the effects of the dowry, the husband is subject to all the obligations of the usufructuary.

3 R. 329.

ART. 2345.—If the dowry is in danger of being lost, the wife may sue for a separation of goods and chattels, as will be explained hereafter.

ART. 2346.—If the dowry consists of immovables or slaves, or if it consists of movables not valued by the marriage contract, or valued with a declaration that the valuation is not intended to divest the wife of her property in the same, the husband or his heirs may be compelled to restore the same without delay, after the dissolution of the marriage.

See 2335.

ART. 2347.—Should the dowry consist of a sum of money, or movables valued by the marriage contract without a declaration that the estimated value is not intended to convey the property of the same to the husband, the restitution of the same cannot be enforced, until one year after the dissolution.

ART. 2348.—If any of the immovables and slaves, the property of which is vested in the wife, have perished or grown worse by use, and without any neglect on the part of the husband, he shall be bound to restore only such as may remain, and in the situation in which they are; nevertheless, the wife may in all cases take back her linen, clothing, and jewels, in her actual use, under the obligation of accounting for their value when such linen, clothes, and jewels have been in the first instance, settled with estimation.

ART. 2349.—If the dowry includes bonds and credits which could not be recovered, whether owing to the insolvency of the debtors or otherwise, but not owing to the fault or neglect of the husband, he shall not be answerable for the consequences, and shall be bound only to restore the deeds or vouchers upon which the debt is grounded.

ART. 2350.—If a dowry consists of usufruct, the husband or his heirs, at the time of the dissolution of the marriage, are bound only to return the right of the usufruct, and not the profits which accrued during the marriage.

ART. 2351.—If the dowry consists, in whole or in part, of herds or flocks, not valued in the marriage contract, or valued with a declaration that the estimated value does not deprive the wife of her property in the same, the husband shall be bound only to deliver such proportion of the increase or young, proceeding from such flocks and herds during the marriage, as shall be necessary to complete the whole number of head of cattle that he originally received.

But with respect to slaves constituted as a dowry, and not estimated in such a manner as to operate their sale, the husband is not bound to give others in the room of those who may be missing or dead, to supply the deficiencies which may have happened among them during the marriage without any fault of his; he is bound only to deliver such as shall remain in the state in which they may be, but he must include in this delivery the living children which may have been born from such slaves.

6 A. 634.

ART. 2352.—If the marriage has lasted ten years, since the time at which the payment of the dowry became due, the wife or her heirs may claim the same from the husband after the dissolution of the marriage, without being bound to prove that the husband has received it, unless the husband shall satisfactorily prove that he has uselessly done every thing in his power to obtain the payment of the same.

This responsibility of the husband does not hold, when the wife herself has promised the dowry, for in such case neither she nor her heirs could claim what she has not paid.

ART. 2353.—If the marriage be dissolved by the death of the wife, the interests and profits of the dowry to be returned, run of right to the benefit of her heirs, from the day of the dissolution.

If it be by the death of her husband, the wife has her choice either to claim the interests of her dowry during the year of mourning, or to claim a sustenance to be taken out of the succession of her husband. But in both cases, she has a right during that year, to be supplied with habitation and mourning dresses out of the succession, which charges shall not be deducted out of the interests due to her.

5 L. 154, 466; 12 L. 129; 3 A. 436.

ART. 2354.—If the lease, which the husband has granted of the dotal immovable, has more than a year to run, at the dissolution of the marriage, it shall be released at the end of a year from the dissolution, if the lessee does not prefer to quit sooner the property rented.

ART. 2355.—The wife has a legal mortgage on the immovables, and a privilege on the movables of her husband, to wit:

1. For the restitution of her dowry, as well as for the replacing of her dotal effects which she brought at the time of her marriage, and which were alienated by her husband, and this from the time of the celebration of the marriage;

4 R. 453; 10 R. 74; 2 A. 789.

2. For the restitution or the replacing of the dotal effects, which she acquired during the marriage, either by succession or by donation, from the day when such succession devolved to her, or such donation began to have its effect.

11 L. 23; See 2 L. 538; 4 L. 554, 558; 13 L. 23; 16 L. 271; See 3267, 3153, 3182, 3221, 3237, 3293.

ART. 2356.—The privilege granted by the preceding article, cannot in any case extend to immovables, and can never affect the rights of creditors, whose mortgage is prior to that of the wife.

2 A. 789.

ART. 2357.—The husband may, at any time, release the mass of his property from this legal mortgage, by giving a special mortgage, to the satisfaction of a family meeting consisting of the relations or friends of his wife, as provided for in the title of *mortgages*.

ART. 2358.—If the husband was already insolvent and had neither art nor trade, when the father settled a dowry on his daughter, she shall be bound to return to the succession of her father only the action she has against the succession of her husband, to be reimbursed for the same.

But if the husband has become insolvent only since the marriage, or if he exercise a trade or profession, which was to him instead of an estate, the loss of the dowry falls solely upon the wife.

ART. 2359.—When the wife has not brought any dowry, or when what she has brought as a dowry is inconsiderable with respect to the condition of the husband, if either the husband or the wife die rich, leaving the survivor in necessitous circumstances, the latter has a right to take out of the succession of the deceased what is called the *marital portion*, that is, the fourth of the succession in full property, if there be no children, and the same portion, in usufruct only, when there are but three or a smaller number of children; and if there be more than three children, the survivor, whether husband or wife, shall receive only a child's share in usufruct, and he is bound to include in this portion what has been left to him as a legacy by the husband or wife, who died first.

6 L. 105; 17 L. 374; 9 R. 101; 3 A. 104, 713; 5 A. 153.

SECTION III.—Of *Paraphernalia* or *Extra-Dotal Effects*.

ART. 2360.—All property, which is not declared to be brought in marriage by the wife, or to be given to her in consideration of the marriage, or to belong to her at the time of the marriage, is paraphernal.

See 1 A. 301.

ART. 2361.—The wife has the right to administer personally her paraphernal property, without the assistance of her husband.

16 L. 5; 17 L. 299; 2 A. 1, 890; See 1 L. 201; 13 L. 431; 6 R. 41.

ART. 2362.—The paraphernal property, which is not administered by the wife separately and alone, is considered to be under the management of the husband.

13 L. 434; 12 R. 524.

ART. 2363.—When the paraphernal property is administered by the husband, or by him and the wife indifferently, the fruits of this property, whether natural, civil, or the result of labor, belong to the conjugal partnership, if there exists a community of gains. If there do not, each party enjoys, as he chooses, that which comes to his hands; but the fruits and revenues, which are existing at the dissolution of the marriage, belong to the owner of the things which produce them.

16 L. 1; 19 L. 574; 10 R. 46; 6 A. 634.

ART. 2364.—The wife who has left to her husband the administration of her paraphernal property, may afterwards withdraw it from him.
8 N. S. 229; 16 L. 5; See 2368.

ART. 2365.—The husband who administers the paraphernal property of his wife, notwithstanding her formal opposition, is accountable to her for all the fruits, as well those existing as those which have been consumed.

ART. 2366.—If all the property of the wife be paraphernal, and she have reserved to herself the administration of it, she ought to bear a proportion of the marriage charges, equal, if need be, to one-half of her income.

16 L. 1; 19 L. 558, 579.

ART. 2367.—The wife may alienate her paraphernal property with the authorization of her husband, or in case of refusal or absence of the husband, with the authorization of the judge; but should it be proved that the husband has received the amount of the paraphernal property thus alienated by his wife, or otherwise disposed of the same for his individual interest, the wife shall have a legal mortgage on all the property of her husband for the reimbursing of the same.

6 L. 22; 11 L. 559; 12 L. 72; 17 L. 296; 19 L. 406; 4 R. 114, 171; 6 R. 36, 154; 10 R. 74, 154; 2 A. 774, 789; 4 A. 411, 465, 569; 5 A. 37, 585, 683; See 2367, 3182.

ART. 2368.—The wife has, even during marriage, a right of action against her husband for the restitution of her paraphernal effects and their fruits, as above expressed.

8 N. S. 229; 7 L. 296; 10 L. 136 139; 16 L. 1; 17 L. 300; 19 L. 553; 2 A. 440.

SECTION IV.—*Of the Community or Partnership of Acquets or Gains.*

§ 1. *Of Legal Partnership.*

ART. 2369.—Every marriage contracted in this State, superinduces of right, partnership or community of acquets or gains, if there be no stipulation to the contrary.

Stat. 18th March, 1852, p. 200.—All property hereafter acquired in this State by non-resident married persons, whether the title thereto be in the name of either the husband or wife, or in their joint names, shall be subject to the same provisions of law which now regulates the community of acquets and gains between citizens of this State.

2 L. 269; 6 A. 57, 257, 327.

ART. 2370.—A marriage contracted out of this State, between persons who afterwards come here to live, is also subjected to the community of acquets, with respect to such property as is acquired after their arrival.

5 N. S. 571; 7 N. S. 41; 4 L. 188; 9 L. 457; 6 A. 256, 327, 436.

ART. 2371.—This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or of fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly

to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase.

1 L. 201, 522; 10 L. 146, 172, 181; 16 L. 1, 5; 17 L. 238, 294; 19 L. 406; 1 R. 431; 3 R. 323; 10 R. 46; 11 R. 445, 526; 12 R. 578; 2 A. 30, 762, 930; 5 A. 611; 6 A. 56, 634; See 4 N.S. 212; 3 L. 231; 10 L. 148; 12 L. 172.

ART. 2372.—In the same manner, the debts contracted during the marriage enter into the partnership or community of gains, and must be acquitted out of the common fund, whilst the debts of both husband and wife, anterior to the marriage, must be acquitted out of their own personal and individual effects.

ART. 2373.—The husband is the head and master of the community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an encumbered title, without the consent and permission of his wife.

He can make no conveyance *inter vivos* by a gratuitous title, of the immovables of the community, nor of the whole, or of a quota of the movables, unless it be for the establishment of the children of the marriage.

Nevertheless he may dispose of the movable effects by a gratuitous and particular title, to the benefit of all persons.

But if it should be proved that the husband has sold the common estate, or otherwise disposed of the same by fraud, to injure his wife, she may have her action against the heirs of her late husband; in support of her claim in one-half of the estate, on her satisfactorily proving the fraud.

6 L. 463; 9 L. 457; 12 R. 334; 2 A. 226, 634; 3 A. 611.

ART. 2374.—At the time of the dissolution of the marriage, all effects which both husband and wife reciprocally possess, are presumed common effects or gains, unless they satisfactorily prove which of such effects they brought in marriage, or have been given them separately, or they have respectively inherited.

See Amendment to Art. 893; 7 M. 362; 11 R. 314, 526; 3 A. 34; See 2371.

ART. 2375.—The effects which compose the partnership or community of gains, are divided into two equal portions between the husband and the wife, or between their heirs, at the dissolution of the marriage; and it is the same with the respect to the profits arising from the effects which both husband and wife brought reciprocally in marriage, and which have been administered by the husband, or by husband and wife conjointly, although what has been thus brought in marriage, by either the husband or the wife, be more considerable than what has been brought by the other, or even although one of the two did not bring any thing at all.

9 L. 580; 12 R. 578; 6 A. 634.

ART. 2376.—The fruits hanging by the roots on the hereditary or proper lands of either the husband or the wife, at the time of the dissolution of the marriage, are equally divided between husband and wife, or their heirs.

It is the same with respect to the young of cattle yet in gestation: but the fruits of the paraphernal effects of which the wife reserved to herself the enjoyment, are excepted from the rule contained in this article.

7 L. 216; 6 A. 634.

ART. 2377.—When the hereditary property of either the husband or the wife has been increased or improved during the marriage, the other spouse, or his or her heirs, shall be entitled to the reward of one-half of the value of the increase or ameliorations, if it be proved that the increase or ameliorations be the result of the common labor, expenses, or industry; but there shall be no reward due, if it be proved that the increase is due only to the ordinary course of things, to the rise in the value of property, or to the chances of trade.

17 L. 302; 12 R. 373, 385; 3 A. 611; 6 A. 634; See 4 R. 278; 6 R. 508; 10 R. 373; 8 R. 181; 2 A. 80.

ART. 2378.—It is understood that, in the partition of the effects of the partnership or community of gains, both husband and wife are to be equally liable for their share of the debts contracted during the marriage, and not acquitted at the time of its dissolution.

11 R. 266; 12 R. 113, 579; 1 A. 280; 2 A. 266; 3 A. 269; See 7 L. 156.

ART. 2379.—Both the wife and her heirs or assigns have the privilege of being able to exonerate themselves from the debts contracted during the marriage, by renouncing the partnership or community of gains.

2 L. 268; 11 R. 266, 314; 3 R. 329; 3 A. 269.

ART. 2380.—The wife who renounces, loses every sort of right to the effects of the partnership or community of gains.

But she takes back all her effects, whether dotal, extra-dotal, hereditary, or proper.

7 L. 292; 4 A. 569.

ART. 2381.—The wife who took an active concern in the effects of the community, cannot renounce the same.

Acts which are simply administrative or conservatory, do not come here under the denomination of active concern.

ART. 2382.—The surviving wife, who wishes to preserve the power of renouncing the community of gains, must make an inventory within the terms and with the formalities prescribed for the beneficiary heir.

12 R. 113; 3 A. 269.

ART. 2383.—She ought also to make her renunciation, within the same terms which are allowed for the beneficiary heir to explain his intentions.

After the expiration of these delays, she may be, in the same manner, forced to make her decision, and judgment may be rendered against her as a partner, unless she renounces.

2 A. 575.

ART. 2384.—The renunciation of the partnership by the wife must be made before a notary and two witnesses.

ART. 2385.—Her linen and clothes shall not, in any case, be comprised in the inventory; she has a right to take them without any formality.

ART. 2386.—The widow, above the age of majority, who has allowed a judgment to pass against her as a partner, by a court of unlimited jurisdiction, shall lose the power of renouncing.

ART. 2387.—The widow, who has concealed or made away with any of the effects of the partnership or community of gains, is declared to be concerned in common, notwithstanding her renunciation. It is the same with respect to her heirs.

ART. 2388.—If the widow dies before the expiration of the above fixed delay, without having made or closed the inventory, the heirs shall be allowed, for the purpose of making or closing it, another term of equal length, to begin from the day of the death of the widow, and of thirty days more to deliberate, after the inventory shall have been closed.

If the widow dies after the inventory was closed, her heirs shall be allowed, to deliberate another term of thirty days, to begin from her death.

They may, however, renounce the partnership or community of gains, according to the forms above established.

ART. 2389.—The wife, separated from bed and board, who has not, within the delays above fixed, to begin from the separation finally pronounced, accepted the community, is supposed to have renounced the same; unless, being still within the term, she has obtained a prorogation from the judge, after the husband was heard, or after he was duly summoned.

ART. 2390.—The creditors of the wife may attack the renunciation, which may have been made by her or by her heirs with a view to defraud her creditors, and accept the community of gains in their own names.

ART. 2391.—The widow, whether she accept or renounce, has a right, during the delays which are granted to her to make an inventory and deliberate, to receive her maintenance and that of her servants out of the provisions in store; and if there be none, she has a right to borrow on account of the common stock, on the condition, however, of using the privilege with moderation.

She owes no rent for the residence she may have made, during such term, in a house appertaining to the community or belonging to the heirs of the husband; and if the house, which both husband and wife did inhabit at the time of the dissolution of the marriage, was rented by them, the wife shall not contribute, during the same term, to the payment of the rent, which shall be taken out of what belongs to the whole.

ART. 2392.—In case of the dissolution of the marriage by the death of the wife, her heirs may renounce the partnership or community of gains, within the term and according to the forms which the law prescribes to the surviving wife.

§ 2.—*Of the Modified or Limited Community.*

ART. 2393.—Married persons may, by their marriage contract, modify the legal community, as they think fit, either by agreeing that the portions shall be unequal, or by specifying the property, belonging to either of them, of which the fruits shall not enter into the partnership.

SECTION V.—*Of the Clause of Separation of Property.*

ART. 2394.—Married persons may stipulate that there shall be no partnership between them.

3 A. 462.

ART. 2395.—In this case, the wife preserves the entire administration of her movable and immovable property, and the free enjoyment of her revenues.

ART. 2396.—She may alienate her real and personal property, in the manner and in the cases above provided for with respect to paraphernal property.

ART. 2397.—Each of the married persons separated contributes to the expenses of the marriage, in the manner agreed on by their contract; if there be no agreement on the subject, the wife contributes to the amount of one-half of her income.

ART. 2398.—When the wife, who is separated, has left the enjoyment of her property to her husband without any procuration, he is only answerable for the fruits existing, whether a demand of them be made by his wife, or if it is not made, until the dissolution of the marriage. He is not accountable for the fruits which have been previously consumed.

CHAPTER III.

OF THE SEPARATION OF PROPERTY PRAYED FOR BY THE WIFE DURING MARRIAGE.

ART. 2399.—The wife may, during the marriage, petition against the husband for a separation of property, whenever her dowry is in danger, owing to the mismanagement of her husband, or otherwise, or when the disorder of his affairs induces her to believe that his estate may not be sufficient to meet her rights and claims.

8 N. S. 231; 10 L. 133; 4 A. 65.

ART. 2400.—The neglect to reinvest the dotal effects of the wife, in cases where the law directs such reinvestment, is also sufficient cause for the wife to demand a separation of property.

ART. 2401.—Separation of property must be petitioned for and ordered by a court of justice, after hearing all parties. It can, in no case, be referred to arbitration.

Every voluntary separation of property is null, both as respects third persons and the husband and wife between themselves.

ART. 2402.—The separation of property, although decreed by a court of justice, is null, if it has not been executed by the payment of the rights and claims of the wife, made to appear by an authentic act, as far as the estate of the husband can meet them, or at least by a *bona fide* non-interrupted suit to obtain payment.

11 L. 533, 537; 1 R. 431; 3 R. 328; 7 R. 73; 1 A. 303; 4 A. 513; 6 A. 212.

ART. 2403.—The separation of property, obtained by the wife, must be published three times, both in the English and French languages,

in the public papers, at farthest within three months after the judgment which ordered the same.

If there be no paper published in the place where the judgment is rendered, the publication must be made in that which is published in the place nearest to it.

See 1 N. S. 568.

ART. 2404.—The wife, who has obtained the separation of property, may, nevertheless, accept the partnership or community of gains, which has existed till that time, if it be her interest so to do, and upon her contributing, in case of acceptance, to pay the common debts.

She retakes, besides, her dowry and all she brought in marriage, or which fell to her during the marriage, in effects hereditary or proper.

ART. 2405.—The separation of property does not impart to the wife any of the rights of a surviving wife; but she keeps the right of exercising them, in case of the death of her husband.

ART. 2406.—The judgment, which pronounces the separation of property, is retroactive as far back as the day on which the petition for the same was filed.

6 R. 527.

ART. 2407.—The personal creditors of the wife cannot, without her consent, petition for a separation of property between her and her husband.

Nevertheless, in case of the failure or discomfiture of the husband, they may exercise the rights of their debtor to the amount of their credits.

ART. 2408.—The creditors of the husband may object to the separation of property decreed and even executed with a view to defraud them. They may even become parties to the suit concerning the petition for a separation of property, and be heard against it.

16 L. 267; 10 R. 74; 1 A. 308; 4 A. 518.

ART. 2409.—The wife, who has obtained the separation of property, must contribute, in proportion to her fortune, and to that of her husband, both to the household expenses and to those of the education of their children.

She is bound to support those expenses alone, if there remains nothing to her husband.

19 L. 558, 579; See 2366; 6 A. 199.

ART. 2410.—The wife separated, whether in person and property or in property only, has again the free administration of her estate. She may dispose of her movable property and alienate the same. She cannot alienate her immovable property without the consent of her husband, or, if he should refuse it, without being authorized by the judge.

See amendment to Article 125; 2 R. 1; 8 R. 457; 2 A. 771.

ART. 2411.—The wife, whether separated in property by contract or judgment, or not separated, cannot, except by and with the authorization of the husband, and in default of the husband, with that of the judge, alienate her immovable effects of whatever nature they may be, before the dissolution of the marriage, except in cases where the alienation of the dotal immovable is permitted.

2 L. 263; See 8 R. 457; 2 A. 771.

ART. 2412.—The wife, whether separated in property by contract

or by judgment, or not separated, cannot bind herself for her husband, nor conjointly with him, for debts contracted by him before or during the marriage.

7 N. S. 251; 9 L. 585; 10 L. 146; 11 L. 186; 1 R. 212; 8 R. 181; 10 R. 68; 12 R. 82, 578; 1 A. 49, 301, 428, 444; 2 A. 3, 579, 873; 3 A. 417, 428; 6 A. 455; See 2 A. 372; 3 A. 658; 5 A. 173, 187, 572.

TITLE VII.

OF SALE.

CHAPTER I.

OF THE NATURE AND FORM OF THE CONTRACT OF SALE.

ART. 2413.—In all cases, where no special provision is made under the present title, the contract of sale is subjected to the general rules established under the title of *conventional obligations*.

12 R. 474; 2 A. 912; See 6 L. 415; 1 A. 249.

ART. 2414.—The contract of sale is an agreement, by which one gives a thing for a price in current money, and the other gives the price in order to have the thing itself.

Three circumstances concur to the perfection of the contract, to wit: the thing sold, the price and the consent.

1 L. 388; 6 L. 346; 13 L. 382; 2 R. 523; 6 R. 450; 11 R. 349; See 1 R. 26; 2 R. 92; 3 R. 331; 12 R. 51, 474; See 2439.

ART. 2415.—All sales of immovable property or slaves shall be made by authentic act, or under private signature.

All verbal sale of any of these things shall be null, as well for third persons as for the contracting parties themselves, and the testimonial proof of it shall not be admitted.

2 L. 593; 4 L. 169; 12 R. 474; 1 A. 72, 299, 459; See 3 M. 443; 4 M. 210; 7 N. S. 661; 2 L. 460; 8 R. 236; See 2255, 2256, 2961.

ART. 2416.—The verbal sale of all movable effects, whatever may be their value, is valid; but its testimonial proof must be made agreeably to what is directed in the title of *conventional obligations*.

5 L. 460; 1 A. 299.

ART. 2417.—The sale of any immovable or slaves, made under private signature, shall have effect against the creditors of the parties, and against third persons in general, only from the day such sale was registered in the office of a notary, and the actual delivery of the things sold took place.

But this defect of registering shall not be pleaded between the parties who shall have contracted in such act, their heirs or assigns, who are as effectually bound by a sale made under private signature, as if it were by an authentic act.

3 L. 160; 9 L. 885; 14 L. 426; 16 L. 433, 442, 454; 1 A. 72, 249; 2 A. 912; 4 A. 262; See 2242.

ART. 2418.—He who is already the owner of a thing, cannot validly purchase it. If he buys it through error, thinking it the property of another, the act is null, and the price must be restored to him.

14 L. 559; 15 L. 391; See 2589.

ART. 2419.—The sales of immovable property or slaves, made by parents to their children, may be attacked by the forced heirs, as containing a donation in disguise, if the latter can prove that no price has been paid, or that the price was below one-fourth of the real value of the immovable or slaves sold, at the time of the sale

CHAPTER II.

OF PERSONS CAPABLE OF BUYING AND SELLING.

ART. 2420.—All persons may buy and sell, except those interdicted by law.

ART. 2421.—A contract of sale, between husband and wife, can take place only in the three following cases :

1. When one of the spouses makes a transfer of property to the other, who is judicially separated from him or her, in payment of his or her rights ;

1 A. 301; 2 A. 483; 5 A. 631.

2. When the transfer made by the husband to his wife, even though not separated, has a legitimate cause, as the replacing of her dotal or other effects alienated ;

4 N. S. 402; 16 L. 1, 5; 5 A. 631; See 11 L. 559; 2 A. 483; 4 A. 65; See 1932, 1939.

3. When the wife makes a transfer of property to her husband, in payment of a sum promised to him as a dowry.

Saving in these three cases to the heirs of the contracting parties, their rights, if there exist any indirect advantage.

ART. 2422.—Public officers connected with courts of justice, such as judges, advocates, attorneys, clerks and sheriffs, cannot purchase litigious rights, which fall under the jurisdiction of the tribunal in which they exercise their functions, under penalty of nullity, and of having to defray all costs, damages and interest.

6 R. 172; 1 A. 316; 2 A. 60, 259, 437; 3 A. 552; 4 A. 173.

CHAPTER III.

OF THINGS WHICH MAY BE SOLD.

ART. 2423.—Any effects of commerce may be sold, when there exists no particular laws to prohibit the traffic therein.

ART. 2424.—Not only corporeal objects, such as movables and immovables, slaves, live stock and produce, may be sold, but also incorporeal things, such as a debt, an inheritance, a servitude, or any other rights.

17 L. 309, 445.

ART. 2425.—A sale is sometimes made of a thing to come, as of what shall accrue from an inheritance, of slaves or creatures yet unborn, or such like other things, although not yet existing.

3 L. 154; 17 L. 303.

ART. 2426.—It also happens sometimes that an uncertain hope is sold, as the fisher sells a haul of his net, before he throws it, and although he should catch nothing, the sale still exists, because it was the hope that was sold, together with the right to have what might be caught.

3 L. 154; 15 L. 340; 17 L. 445.

ART. 2427.—The sale of a thing belonging to another person, is null; it may give rise to damages, when the buyer knew not that the thing belonged to another person.

5 R. 76, 193; 9 R. 283; 11 R. 16; 12 R. 626; 1 A. 284; 4 A. 458; 6 A. 7.

ART. 2428.—The thing, claimed as the property of the claimant, cannot be alienated, pending the action, so as to prejudice his right. If judgment be rendered for him, the sale is considered as a sale of another's property, and does not prevent him from being put in possession by virtue of such judgment.

13 L. 257; 10 R. 113; 2 A. 254; 3 A. 243; 4 A. 293.

ART. 2429.—The succession of a living person cannot be sold.

ART. 2430.—If, at the moment of the sale, the thing sold is totally destroyed, the sale is null; if there is only a part of the thing destroyed, the purchaser has the choice, either to abandon the sale, or to retain the preserved part, by having the price thereof determined by appraisement.

CHAPTER IV.

HOW THE CONTRACT OF SALE IS TO BE PERFORMED.

ART. 2431.—The sale is considered to be perfect between the parties, and the property is of right acquired to the purchaser with regard to the seller, as soon as there exists an agreement for the object and for the price thereof, although the object has not yet been delivered, nor the payment made.

3 L. 178; 6 L. 415; 13 L. 257, 261; 17 L. 359; 19 L. 237; 1 R. 26; 2 R. 92; 3 R. 331; 11 R. 349; 12 R. 474; 2 A. 746; 5 A. 656; 6 A. 84.

ART. 2432.—The sale may be made purely and simply, or under a condition either suspensive or resolute. The object of the sale may also be to have two or several alternative things.

In all these cases, its effects are regulated by the principles laid down in the title of *conventional obligations*.

ART. 2433.—When goods, produce, or other objects, are not sold in a lump, but by weight, by tale, or by measure, the sale is not perfect, inasmuch as the things so sold are at the risk of the seller, until they be weighed, counted or measured; but the buyer may require either the delivery of them or damages, if any be for the same, in case of non-execution of the contract.

12 R. 51.

ART. 2434.—If, on the contrary, the goods, produce, or other objects, have been sold in a lump, the sale is perfect, though these objects may not have been weighed, counted or measured.

ART. 2435.—Things, of which the buyer reserves to himself the view and trial, although the price be agreed on, are not sold, until the buyer be satisfied with the trial, which is a kind of suspensive condition of the sale.

ART. 2436.—The sale of a thing includes that of its accessories, and of whatever has been destined for its constant use, unless there be a reservation to the contrary.

ART. 2437.—A promise to sell amounts to a sale, when there exists a reciprocal consent of both parties, as to the thing and the price thereof; but, to have its effect, either between the contracting parties or with regard to other persons, the promise to sell must be vested with the same formalities, as are above prescribed in articles 2414 and 2415 concerning sales, in all cases where the law directs that the sale be committed to writing.

3 N.S. 583; 17 L. 450; 11 R. 349; 12 R. 474; 1 A. 459; See 2 L. 460.

ART. 2438.—But if the promise to sell has been made with the giving of earnest, each of the contracting parties is at liberty to recede from the promise, to wit: he who has given the earnest, by forfeiting it; and he who has received it, by returning the double.

17 L. 450.

ART. 2439.—The price of the sale must be certain, that is to say, fixed and determined by the parties.

It ought to consist of a sum of money, otherwise it would be considered as an exchange.

It ought to be serious, that is to say, there should have been a serious and true agreement that it should be paid.

It ought not to be out of all proportion with the value of the thing; for instance, the sale of a plantation for a dollar could not be considered as a fair sale; it would be considered as a donation disguised.

6 L. 349; 13 L. 382.

ART. 2440.—The price, however, may be left to the arbitration of a third person; but if such person cannot, or be unwilling to make the estimation, there exists no sale.

ART. 2441.—The expenses of the act or other incidental costs of sale, are chargeable to the buyer, unless some agreement be made to the contrary.

CHAPTER V.

AT WHOSE RISK IS THE THING SOLD AFTER THE SALE IS COMPLETED.

ART. 2442.—As soon as the contract of sale is completed, the thing sold is at the risk of the buyer, but with the following modifications.

12 R. 51; 2 A. 654, 746.

ART. 2443.—Until the thing sold is delivered to the buyer, the seller is obliged to guard it as a faithful administrator; and if, through want of this care, the thing is destroyed, or its value diminished, the seller is responsible for the loss.

2 R. 60, 90.

ART. 2444.—He is released from this degree of care, when the buyer delays obtaining the possession ; but he is still liable for any injury which the thing sold may sustain, through gross neglect on his part.

2 R. 60, 90.

ART. 2445.—If it is the seller who delays to deliver the thing, and it be destroyed, even by a fortuitous event, it is he who sustains the loss, unless it appear certain that the fortuitous event would equally have occasioned the destruction of the thing in the buyer's possession, after delivery.

16 L. 10.

ART. 2446.—A sale, made with a suspensive condition, does not transfer the property to the buyer, until the fulfilment of the condition.

If the thing be destroyed before this happens, the loss is sustained by the seller.

If the thing be only deteriorated, when the condition is accomplished, the buyer has the choice, either to take it in the state in which it is, or to dissolve the contract.

If it has undergone any improvement without the agency of the seller, the buyer has the advantage of this improvement, without having to pay any increase of price.

ART. 2447.—In alternative sales, whether the choice be left to the seller, or be expressly granted to the buyer, the first of the two things which perishes after the contract, is a loss to the seller, and he must give up that which remains. But if that which remains also perish, it is the buyer's loss, and he must pay the price of it.

ART. 2448.—In the case specified in the above article, when the choice is reserved to the buyer, he may recede from the contract, if one of the things has perished, provided he has not delayed to be put in possession.

CHAPTER VI.

OF THE OBLIGATIONS OF THE SELLER.

ART. 2449.—The seller is bound to explain himself clearly respecting the extent of his obligations : any obscure or ambiguous clause is construed against him.

13 L. 257; 4 R. 315; 5 R. 75; 10 R. 5; 2 A. 135; 3 A. 192; 4 A. 109.

ART. 2450.—The seller is bound to two principal obligations, that of delivering and that of warranting the thing which he sells.

9 R. 351; 4 A. 400; 5 A. 577.

ART. 2451.—The warranty respecting the seller has two objects ; the first is the buyer's peaceable possession of the thing sold, and the second is the hidden defects of the thing sold, or its redhibitory vices.

12 L. 173; 3 A. 377; 5 A. 577; 6 A. 396.

SECTION I.—*Of the Tradition or Delivery of the Thing Sold.*

ART. 2452.—The tradition or delivery is the transferring of the thing sold into the power and possession of the buyer.

13 L. 235; 12 R. 51.

ART. 2453.—The tradition or delivery of movable effects takes place either by their real tradition, or by the delivery of the keys of the buildings in which they are kept; or, even by the bare consent of the parties, if the things cannot be transported at the time of sale, or if the purchaser had them already in his possession under another title.

15 L. 377; 12 R. 51.

ART. 2454.—The tradition or delivery of slaves, takes place either by real delivery made to the buyer, or by the mere consent of the parties, when the sale mentions that the thing has been sold and delivered to the buyer, or when the buyer was already in possession under another title.

ART. 2455.—The law considers the tradition or delivery of immovables, as always accompanying the public act, which transfers the property. Every obstacle which the seller afterwards interposes to prevent the corporal possession of the buyer, is considered as a trespass.

3 L. 178; 13 L. 235; 1 R. 821; 9 R. 514; 10 R. 425; 2 A. 757, 798; 4 A. 400; 5 A. 577.

ART. 2456.—In all cases where the thing sold remains in the possession of the seller, because he has reserved to himself the usufruct, or retains possession by a precarious title, there is reason to presume that the sale is simulated, and with respect to third persons, the parties must produce proof that they are acting in good faith, and establish the reality of the sale.

4 L. 340; 6 L. 542; 11 L. 276; 5 R. 18; 7 R. 434; 1 A. 132; 2 A. 912; 5 A. 1, 49; 6 A. 25, 438.

ART. 2457.—The tradition of the incorporeal rights is to be made either by the delivery of the titles and of the act of transfer, or by the use made by the purchaser, with the consent of the seller.

ART. 2458.—When the object sold is out of the vendor's possession, he must redeem it at his cost, and deliver it to the buyer, unless it be differently agreed between the parties, or unless it evidently appears from the contract, that the buyer himself has undertaken to reclaim it.

ART. 2459.—The costs of delivery are chargeable to the seller, and those of removing are to be supported by the buyer, if there has been no stipulation made to the contrary.

ART. 2460.—The delivery must be made on the place where the thing, which is the object of the sale, was at the time of such sale, if not otherwise agreed upon.

ART. 2461.—If the seller fails to make the delivery at the time agreed on between the parties, the buyer will be at liberty to demand, either a cancelling of the sale, or his being put in possession, if the delay is occasioned only by the deed of the seller.

10 R. 423

ART. 2462.—In all cases, the seller is liable to damages, if there result any detriment to the buyer, occasioned by the non-delivery at the time agreed on.

ART. 2463.—The seller is not bound to make a delivery of the thing, if the buyer does not pay the price, and the seller has not granted him any term for the payment.

ART. 2464.—Neither shall he be obliged to the delivery, even if he has granted a term for the payment, if since the sale the buyer is become

a bankrupt, or is in a state of insolvency, so that the seller would be in imminent danger of losing the price of the same, unless the buyer should give him security to pay at the time agreed on.

ART. 2465.—The thing must be delivered in the same state in which it was at the time of the sale, that is to say, without any change occasioned by the act or fault of the seller.

From the day of sale all the profits belong to the purchaser.

ART. 2466.—The obligation of delivering the thing includes the accessories and dependencies, without which it would be of no value or service, and likewise every thing that has been designed to its perpetual use.

ART. 2467.—The seller is bound to deliver the full extent of the premises, as specified in the contract, under the modifications hereafter expressed.

ART. 2468.—If the sale of an immovable has been made with indication of the extent of the premises at the rate of so much per measure, the seller is obliged to deliver to the buyer, if he requires it, the quantity mentioned in the contract, and if he cannot conveniently do it, or if the buyer does not require it, the seller is obliged to suffer a diminution proportionate to the price.

ART. 2469.—If, on the other hand, there exists an extent of more than what is specified in the contract, the buyer has a right, either to give the supplement of the price, or to recede from the contract, should the overplus be upwards of a twentieth part of the extent which is declared.

ART. 2470.—In all other cases, whether the sale be of a certain and limited body, or of distinct and separate objects, whether it first set forth the measure, or the designation of the object, followed by its measure, the expression of the measure gives no room to any supplement of price, in favor of the seller, for the overplus of the measure; neither can the purchaser claim a diminution of the price on a deficiency of the measure, unless the real measure comes short of that expressed in the contract, by one-twentieth part, regard being had to the totality of the objects sold; provided there be no stipulation to the contrary.

1 N. S. 179; 5 L. 353; 16 L. 187.

ART. 2471.—There can be neither increase nor diminution of price on account of disagreement in measure, when the object is designated by the adjoining tenements, and sold from boundary to boundary.

3 L. 91; 7 L. 459; 16 L. 187, 333, 497; 18 L. 526, 530; 2 A. 808; 19 L. 422; 2 R. 357; See 12 M. 428; 15 L. 204; 9 R. 80.

ART. 2472.—In the case, where there is room for an augmentation of price for the surplus of the measure, the buyer has the option to give the supplement, or to recede from the contract.

ART. 2473.—In all cases, where the buyer has a right to recede from the contract, the seller is bound to make him restitution, not only of the price, if already received, but also of the expenses occasioned by the contract.

ART. 2474.—The action for supplement of the price on the part of the seller, and that for diminution of the price, or for the cancelling of

the contract on the part of the buyer, must be brought within one year from the day of the contract, otherwise it is barred.

5 R. 83; 1 A. 840.

ART. 2475.—If two pieces of ground have been sold by one and the same contract with the expression of the measure for each, and there be found a less quantity in one, and a larger one in the other, the deficiency of the one, is supplied by the overplus of the other, as far as it goes, and the action, either in supplement or in abatement of the price, takes place only according to the rules above established.

SECTION II.—*Of the Warranty in case of Eviction of the Thing sold.*

ART. 2476.—The eviction is the loss suffered by the buyer of the totality of the thing sold or of a part thereof, occasioned by the right or claims of a third person.

13 L. 19; 11 R. 397.

ART. 2477.—Although at the time of the sale no stipulations have been made respecting the warranty, the seller is obliged of course to warrant the buyer against the eviction suffered by him of the totality or part of the thing sold, and against the charges claimed on that object, which were not declared at the time of the sale.

ART. 2478.—That the warranty should have existence, it is necessary that the right of the person evicting shall have existed before the sale. If therefore this right before the sale was only imperfect, and is afterwards perfected by the negligence of the buyer, he has no claim for warranty.

1 A. 200.

ART. 2479.—The parties may, by particular agreement, add to the obligation of warranty, which results of right from the sale, or diminish its effect: they may even agree that the seller shall not be subject to any warranty.

4 R. 20; 6 A. 305; See 1757, 2255.

ART. 2480.—Although it be agreed that the seller is not subject to warranty, he is however accountable for what results from his personal act, and any contrary agreement is void.

6 A. 304; 6 L. 550; See 1 M. 149; 6 M. 636; 7 M. 33; 17 L. 97; 18 L. 37; 4 R. 155.

ART. 2481.—Even in case of stipulation of no warranty, the seller, in case of eviction, is liable to a restitution of the price, unless the buyer was aware, at the time of the sale, of the danger of the eviction, and purchased at his peril and risk.

6 L. 550; 17 L. 309; 5 R. 76; 3 A. 326; 5 A. 314, 667; 6 A. 304.

ART. 2482.—When there is a promise of warranty, or when no stipulation was made on that subject, if the buyer be evicted, he has a right to claim against the seller:

1. The restitution of the price;

3 L. 380; See 7 L. 123; 9 L. 556.

2. That of the fruits or revenues, when he is obliged to return them to the owner who evicts him;

3. All the costs occasioned, either by the suit in warranty on the part of the buyer, or by that brought by the original plaintiff;

5 L. 119; 19 L. 377; 2 A. 863. See 7 L. 52; 6 A. 299, 304; 14 L. 83.

4. In fine, the damages, when he has suffered any, besides the price that he has paid.

ART. 2483.—When, at the time of the eviction, the thing sold has lost any of its value, or is considerably impaired, either through the neglect of the buyer, or by any providential acts, or unforeseen accidents, the seller is still bound to the restitution of the full price.

ART. 2484.—If, however, the thing sold was impaired by the buyer, and he has reaped some benefit therefrom, the seller has a right to retain on the price, the amount to which such damages may be estimated in favor of the owner who evicts him.

4 L. 340.

ART. 2485.—The seller is bound to reimburse, or cause to be reimbursed, to the buyer, by the person who evicts him, all useful improvements made by him on the premises.

3 L. 543; 7 L. 470; 10 R. 178; 3 A. 278.

ART. 2486.—If the seller, knowingly and dishonestly, has sold the property of another person, he shall be obliged to reimburse to the buyer all expenses, even those of the embellishments of luxury, that the buyer has been at in improving the premises.

7 L. 51; 6 A. 303.

ART. 2487.—If only a part of the thing sold be evicted, and it be of such consequence relatively to the whole, that the buyer would not have purchased it without the part which is evicted, he may have the sale cancelled.

6 R. 566; 3 A. 326.

ART. 2488.—Not only eviction from part of the thing sold, but eviction from that which proceeds from it, is included in the warranty. Such would be the eviction from the child of a slave, after the death of the mother.

10 R. 128.

ART. 2489.—But if the thing sold be succession rights, the eviction which the buyer might suffer from any particular thing found among the property of the succession, does not give rise to the warranty, because in this case the thing sold is only the succession right, which includes only such things as belong really to the succession.

ART. 2490.—If in case of eviction of a part of the thing, the sale is not cancelled, the value of the evicted part is to be reimbursed to the buyer according to its estimate, proportionably to the total price of the sale.

7 L. 50; 5 A. 276.

ART. 2491.—If the inheritance sold be encumbered with servitudes not apparent, without any declaration having been made thereof, if the servitudes be of such importance that there is cause to presume that the buyer would not have contracted, if he had been aware of the encumbrance, he may claim the cancelling of the contract, should he not prefer to have an indemnification.

ART. 2492.—Other questions arising from a claim of damages, resulting to the buyer from the non-execution of the contract of sale, shall be decided by the general rules established under the title of *conventional obligations*.

ART. 2493.—The purchaser threatened with eviction, who wishes to preserve his right of warranty against his vendor, should notify the latter in time of the interference which he has experienced.

This notification is usually given by calling in the vendor to defend the action which has been instituted against the purchaser.

4 A. 129.

ART. 2494.—In the absence of this notification, or if it has not been made within due time, that is, in time for the vendor to defend himself, the warranty is lost; provided, however, that the vendor shall show that he possessed proofs, which would have occasioned the rejection of the demand, and which have not been employed, because he was not summoned in time.

1 A. 1; 2 A. 843; 4 A. 129.

ART. 2495.—When the purchaser is himself obliged to commence judicial proceedings against a person disturbing his possession, he ought to notify his vendor of the action which he is commencing; and the vendor, whether he undertake to conduct the suit for him or not, is obliged to indemnify him fully, in case of condemnation.

7 L. 421.

SECTION III.—*Of the Vices of the Thing sold.*

§ 1.—*Of the Vices of the Thing sold, which give occasion for the Redhibitory Action.*

ART. 2496.—Redhibition is called the avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice.

1 N. S. 312; 1 L. 310; 5 L. 360; 7 L. 519; 9 L. 134; 12 L. 213; 17 L. 101; See 8 M. 313; 2 L. 463; 14 L. 432.

ART. 2497.—Apparent defects, that is, such as the buyer might have discovered by simple inspection, are not among the number of redhibitory vices.

9 L. 129, 132; 19 L. 391; 8 R. 225; 1 A. 389; 3 A. 377; 5 A. 491; See 2 L. 463; 14 L. 432.

ART. 2498.—Nor can the buyer institute the redhibitory action, on account of the latent defects which the seller has declared to him before or at the time of the sale. Testimonial proof of this declaration may be received.

16 L. 340; 3 R. 12; 5 A. 106; 6 A. 724.

ART. 2499.—With regard to inanimate things, the latent defects which give rise to the redhibitory action, are in general all such as are comprised in the definition expressed at the commencement of this paragraph.

6 A. 497.

ART. 2500.—The latent defects of slaves and animals are divided into two classes; vices of body, and vices of character.

7 N. S. 673.

ART. 2501.—The vices of body are distinguished into absolute and relative.

Absolute vices are those, of which the bare existence gives rise to the redhibitory action;

Relative vices are those, which give rise to it, only in proportion to the degree in which they disable the object sold.

2 L. 463.

ART. 2502.—The absolute vices of slaves are leprosy, madness, and epilepsy.

19 L. 392; 6 A. 273.

ART. 2503.—The absolute vices of horses and mules are short wind, glanders and founder.

ART. 2504.—The other vices of body, as well in slaves as in animals, are included in the definition given at the commencement of this paragraph.

ART. 2505.—The vices of character, which give rise to the redhibition of slaves, are confined to the cases in which it is proved:

That the slave has committed a capital crime;

6 L. 229; 12 L. 212.

Or, that he is addicted to theft;

Or, that he is in the habit of running away.

13 L. 202, 354; 3 A. 464.

The slave shall be considered as being in the habit of running away, when he shall have absented himself from his master's house twice for several days, or once for more than a month.

2 L. 251, 408; 6 A. 30; See amendment to Art. 2508.

ART. 2506.—The vices of character, which give rise to the redhibition of animals, are comprised in the definition given at the commencement of this paragraph.

ART. 2507.—A declaration made in good faith by the seller, that the thing sold has some quality, which it is found not to have, gives rise to a redhibition, if this quality was the principal motive for making the purchase.

ART. 2508.—The buyer who institutes the redhibitory action, must prove that the vice existed before the sale was made to him. If the vice has made its appearance within three days immediately following the sale, it is presumed to have existed before the sale.

Stat. 1834, p. 7.—§ 3. The buyer of a slave who institutes a redhibitory action on the ground that such slave is a runaway or thief, shall not be bound to prove that such vice existed before the date of the sale, whenever said vice shall have been discovered within two months after the sale, and no renunciation of this provision shall be valid; provided, however, that where unusual punishments have been inflicted, this legal presumption in favor of the buyer shall cease; And provided also, that if any redhibitory, bodily or mental maladies discover themselves within fifteen days after the sale, it shall be presumed to have existed on the day thereof, any law to the contrary notwithstanding; And, provided also, that the provisions of this section shall not apply to slaves who have been more than eight months in this State.

N. S. 312; 8 N. S. 473; 1 L. 310; 2 L. 254; 6 L. 441; 17 L. 101; 5 R. 222; 4 A. 51, 96; 5 A. 604;
See 4 A. 186; 5 A. 559.

ART. 2509.—The seller who knew not the vices of the thing, is only bound to restore the price, and to reimburse the expenses occasioned by the sale, as well as those incurred for the preservation of the thing, unless the fruits, which the purchaser has drawn from it, be sufficient to satisfy those expenses.

1 N. S. 312; 1 L. 809; 3 L. 323; 17 L. 101; 9 R. 351; 1 A. 27; 2 A. 743.

ART. 2510.—If the thing affected with the vices, has perished through the badness of its quality, the seller must sustain the loss.

17 L. 100; 1 R. 46.

ART. 2511.—If it has perished by a fortuitous event, before the purchaser has instituted his redhibitory action, the loss must be borne by him.

But if it has perished even by fortuitous event since the commencement of the suit, it is for the seller to bear the loss.

ART. 2512.—The redhibitory action must be instituted within a year, at the farthest, commencing from the date of the sale.

3 N. S. 230; 6 N. S. 129; 6 A. 29.

This limitation does not apply where the seller had knowledge of the vice, and neglected to declare it to the purchaser.

10 L. 579; 4 R. 155; 9 R. 98; 1 A. 405; 3 A. 464; See 3 L. 323.

Nor where the seller, not being domiciliated in the State, shall have absented himself before the expiration of the year following the sale, in which case the prescription remains suspended during his absence.

12 M. 76; 7 L. 531; 5 R. 106.

ART. 2513.—The redhibition of animals can only be sued for within fifteen days immediately following the sale.

Stat. 1828, p. 160.—§ 22. All suits for the redhibitory defects of animals may be instituted within two months after the date of the sale thereof, any law to the contrary notwithstanding.

ART. 2514.—The redhibitory action may be commenced after the loss of the object sold, if that loss was not occasioned by the fault of the purchaser.

ART. 2515.—Redhibition does not take place in the cases of sales made under a seizure by order of a court of justice.

3 N. S. 32, 220, 695; See 4 N. S. 500.

ART. 2516.—The redhibitory action is not divisible among the heirs of the purchaser, that is to say, they must all concur in it, and no one of them can bring it for his part only.

ART. 2517.—It may be brought against the heirs of the vendor collectively, or against one of them, at the choice of the purchaser.

ART. 2518.—The redhibitory vice of one of several things sold together, gives rise to the redhibition of all, if the things were matched, as a pair of horses, or a yoke of oxen.

4 R. 351; 4 A. 430.

§ 2.—Of the Vices of the Thing sold which occasion a Reduction of the Price.

ART. 2519.—Whether the defect in the thing sold be such as to render it useless and altogether unsuited to its purpose, or whether it be

such as merely to diminish the value, the buyer may limit his demand to the reduction of the price.

ART. 2520.—The buyer may also content himself with resorting to this action, when the quality which the thing sold has been declared to possess, and which it is found to want, is not of such importance as to induce him to demand a redhibition.

ART. 2521.—The purchaser who has contented himself with demanding a reduction of the price, cannot afterwards maintain the redhibitory action.

But in a redhibitory suit, the judge may decree merely a reduction of the price.

ART. 2522.—The same action for a reduction of price is subject to the same rules and to the same limitations as the redhibitory action.

3 R. 310.

§ 3.—*Of the Vices of the Thing sold, which the Seller has concealed from the Buyer.*

ART. 2523.—The seller who knows the vice of the thing he sells, and omits to declare it, besides the restitution of the price and repayment of the expenses, is answerable to the buyer in damages.

1 A. 27, 122; 2 A. 67; 3 A. 464.

ART. 2524.—In this case, the action for redhibition may be commenced at any time, provided a year has not elapsed since the discovery of the vice.

This discovery is not to be presumed; it must be proved by the seller.

3 A. 464.

ART. 2525.—A declaration made by the seller, that the thing sold possesses some quality which he knows it does not possess, comes within the definition of fraud, and ought to be judged according to the rules laid down on the subject, under the title of *conventional obligations*.

It may, according to circumstances, give rise to the redhibition, or to a reduction of the price, and to damages in favor of the buyer.

13 L. 204; 3 A. 464.

ART. 2526.—The renunciation of warranty, made by the buyer, is not obligatory, where there has been fraud on the part of the seller.

18 L. 32.

CHAPTER VII.

OF THE OBLIGATIONS OF THE BUYER.

ART. 2527.—The obligations of the buyer are :

1. To pay the price of sale ;
2. To receive delivery of the thing, and to remove it, if it be an object which requires removal ; and to indemnify the seller for what he has expended in preserving it for him.

17 L. 25; 2 A. 133, 459; 3 A. 699.

ART. 2528.—The price ought to be paid on the day and at the place mentioned in the sale.

If no stipulations have been made on that point, at the time of the sale, the buyer must pay at the time and at the place where the delivery is to be made.

ART. 2529.—On failure of the buyer to pay the price, the seller may compel him to do it, by offering to deliver the thing to him, if that has not been already done.

ART. 2530.—If, after the contract, and before the seller has been required to deliver the thing, it ceases to be susceptible of delivery, without his fault, the buyer is still bound to pay him the price.

ART. 2531.—The buyer owes interest on the price of the sale, until the payment of the capital, in the three following cases :

1. If it has been so agreed at the time of the sale ;
2. If the thing sold produces fruits, or any other income ;
3. If he has been sued for the payment.

In this last case the interest runs only from the day on which the suit was instituted.

19 L. 152; 12 R. 395; 2 A. 462, 651.

ART. 2532.—When the seller has granted to the buyer a term for the payment, the interest begins to run from the end of that term.

ART. 2533.—The purchaser who neglects to obtain delivery of the thing sold, after having been put in default, is answerable to the vendor for the damage he may sustain on that account, and for the reimbursement of the expenses which he may have incurred for the preservation of the thing.

ART. 2534.—The seller may even obtain authority, where movables or slaves have been sold, and the custody of them is inconvenient to him, for putting them out of his house at the risk of the purchaser, on giving him notice of the day and hour at which he will put them out.

ART. 2535.—If the buyer is disquieted in his possession, or has just reason to fear that he shall be disquieted, by an action of mortgage or by any other claim, he may suspend the payment of the price, until the seller has restored him to quiet possession, unless the seller has restored him to quiet possession, unless the seller prefer to give security.

There is an exception to this rule, when the buyer has been informed, before the sale, of the danger of the eviction.

12 M. 432; 8 N. S. 329; 3 L. 97; 5 L. 19; 13 L. 477; 17 L. 26, 193; 19 L. 152, 163, 283; 7 R. 22
2 A. 384; 5 A. 166, 653, 741; 6 A. 117; See 6 L. 485; 14 L. 467; 15 L. 147; 16 L. 501; 13 L. 50;
19 L. 255; 6 R. 324; 5 A. 365.

ART. 2536.—In the case mentioned in the preceding article, the seller who cannot receive the price, from being unable to give security, may compel the buyer to deposit the price, subject to the order of the court, to await the decision of the suit.

3 L. 97; See 2535.

ART. 2537.—The purchaser may also require the deposit, to relieve himself from the payment of interest.

13 L. 333; 19 L. 31, 147; 7 R. 175; 9 R. 424.

ART. 2538.—If the purchaser has paid before disturbance of his possession, he can neither demand a restitution of the price, nor security during the suit.

2 A. 143, 459; 3 A. 699; See 2 L. 140, 242; 17 L. 216.

ART. 2539.—If the buyer does not pay the price, the seller may sue for the dissolution of the sale.

17 L. 311; 1 A. 420; 6 A. 3.

ART. 2540.—The dissolution of the sale of immovables is summarily awarded, when there is danger that the seller may lose the price and the thing itself.

If that danger does not exist, the judge may grant to the buyer a longer or shorter time, according to circumstances, provided such term exceed not six months.

This term being expired without the buyer's yet having paid, the judge shall cancel the sale.

See 2 L. 401; 17 L. 311.

ART. 2541.—If, at the time of the sale of immovables, it has been stipulated that, for want of payment of the price within the term agreed on, the sale should be of right dissolved, the buyer may nevertheless make payment after the expiration of the term, as long as he has not been placed in a state of default, by a judiciary demand, but after that demand, the judge can grant him no delay.

ART. 2542.—In matters of sale of slaves or movable effects, the dissolution of the sale shall take place of right, if demanded, without its being in the power of the judge to grant any delay, except that fixed by law.

19 L. 31.

ART. 2543.—If, on account of delay in the payment of the price, the seller is obliged to retain, or to resume the thing sold, and its value is diminished, the buyer is bound to make good this diminution to the amount of the price which had been agreed upon.

16 L. 467, 470.

CHAPTER VIII.

OF THE NULLITY AND RESCISSION OF THE SALE.

ART. 2544.—Besides the causes of nullity or dissolution of the sale already mentioned in this title, and those which are common to all agreements, the contract of sale may be cancelled by the use of the power of redemption, and by the effect of the lesion beyond moiety.

SECTION I.—*Of the Power or Right of Redemption.*

ART. 2545.—The right of redemption is an agreement or paction, by which the vendor reserves to himself the power of taking back the thing sold by returning the price paid for it.

ART. 2546.—The right of redemption cannot be reserved for a time exceeding ten years.

If a term exceeding that has been stipulated in the agreement, it shall be reduced to the term of ten years.

ART. 2547.—The time fixed for the redemption must be rigorously adhered to; it cannot be prolonged by the judge.

ART. 2548.—If that right has not been exercised within the time

agreed on by the vendor, he cannot exercise it afterwards, and the purchaser becomes irrevocably possessed of the thing sold.

ART. 2549.—The delay runs against any person, not excepting minors, who cannot be relieved against it.

ART. 2550.—A person having sold a thing with the power of redemption, may exercise the right against a second purchaser, even in case such right should not have been mentioned in the second sale.

ART. 2551.—The person having purchased an estate under a condition of redemption, is entitled to all the rights possessed by the vendor; he may prescribe against the true proprietor, as well as against those having claims or mortgages on the thing sold.

ART. 2552.—He may oppose the plea of discussion to the creditors of his vendor.

ART. 2553.—The fruits are his, until the vendor exercises his right of redemption.

ART. 2554.—He becomes absolute owner of the natural augmentations, which the thing receives by accession, and is not bound to restore them.

But if these augmentations are of such a nature that they cannot be separated from the thing sold without injury to it, the person exercising the right of redemption, may insist that they shall be yielded to him for a fair price.

ART. 2555.—With regard to the augmentations which the purchaser, with benefit of redemption, may have produced at his own expense, he has a right to an indemnity for them, as is hereafter stated, or to take them away, if the removal can be effected in such a way, that the thing sold shall be placed in its original condition.

ART. 2556.—The thing sold shall be restored to the seller who exercises the right of redemption, in the state in which it is at the moment. If it has been deteriorated without the fault of the buyer, the loss must be borne by the seller, nor can he, in this case, claim any reduction of the price to be reimbursed. If it has been deteriorated by the fault or negligence of the buyer, though this be but slight, he must make good the loss to the seller.

ART. 2557.—If the purchaser of an undivided portion of an inheritance, sold with the power of redemption, has become the purchaser of the whole, on a cant or auction pursued against him, he may oblige the vendor to redeem the whole, if the latter wishes to avail himself of the redemption.

ART. 2558.—If several persons have jointly sold by a single contract a joint inheritance, each one of them can individually exercise the right of redemption for that share only which belonged to him.

ART. 2559.—The same principle governs, when a person having sold an inheritance, leaves several co-heirs; each of these co-heirs can only exercise the right of redemption for the portion of the estate which falls to his share.

ART. 2560.—But in the case provided for in the two preceding articles, the purchaser may require, if he deem it proper, that all the co-vendors and co-heirs may be made parties to the suit, for the purpose that they may agree together on the redemption of the whole estate; and in case the co-vendors or co-heirs should not agree, the purchaser shall be hence dismissed.

ART. 2561.—If an estate, belonging to several persons, has not been sold by them jointly, and if each co-partner has only sold individually his share on that estate, they may separately exercise the right of redemption on the respective portions which belonged to each of them; and in that case the purchaser cannot compel him, who thus exercises the right of redemption, to redeem the whole estate.

ART. 2562.—If the purchaser has left several heirs, the right of redemption can only be exercised against them individually, for the portion belonging to each of them respectively, whether the estate has already been divided between them or not. But if a partition has already taken place, by which the thing subject to redemption has fallen to the share of only one of the co-heirs, the action of redemption may be brought against this heir for the whole estate.

ART. 2563.—The creditors of the vendor cannot make use of the right of redemption, which such vendor may have reserved to himself.

ART. 2564.—When a vendor exercises the right of redemption, he becomes entitled to all the fruits not yet gathered, from the day in which he has either reimbursed or consigned the money paid by the purchaser, unless the contrary has been stipulated.

14 L. 235.

ART. 2565.—The vendor, who exercises the right of redemption, is bound to reimburse to the purchaser, not only the purchase money, but also the expenses resulting from necessary repairs, those which have attended the sale, and the price of the improvements which have increased the value of the estate, up to that increased value.

ART. 2566.—When a vendor recovers the possession of his inheritance by virtue of the power of redemption, he recovers it free from any mortgages or incumbrances created by the purchaser, provided such possession be recovered within the ten years as provided by article 2546. If, after the expiration of these ten years, the vendor recover his estate with the consent of the purchaser, the estate remains liable for every mortgage and incumbrance laid upon it by the purchaser.

SECTION II.—*Of the Rescission of Sales on account of Lesion.*

ART. 2567.—If the vendor has been aggrieved for more than half the value of an immovable estate by him sold, he has the right to demand the rescission of the sale, even in case he had expressly abandoned the right of claiming such rescission, and declared that he gave to the purchaser the surplus of the thing's value.

See 5 L. 282.

ART. 2568.—To ascertain whether there is lesion in more than one half, the immovable must be estimated, according to the state in which it was, and the value which it had, at the time of the sale.

ART. 2569.—If it should appear that the immovable estate has been sold for less than one-half of its just value, the purchaser may either restore the thing and take back the price which he has paid, or make up the just price and keep the thing.

ART. 2570.—Should the purchaser prefer to keep the thing by making up the just price, he must pay the interest of the additional price from the day when the rescission was demanded. If he chooses rather to restore the thing and to receive the purchase money, he shall be li-

ble to restore the fruits of the estate from the day of the demand, but the interest of his money shall also be paid to him from the same time

6 L. 762.

ART. 2571.—The rescission for having been aggrieved for more than half the value of a thing, cannot take place in favor of the purchaser.

ART. 2572.—Rescission for lesion beyond moiety is not granted against sales of movables, slaves and produce, nor when rights to a succession have been sold to a stranger, nor in matter of transfer of credits, nor against sales of real property made by virtue of any decree or process of a court of justice.

ART. 2573.—Actions for rescission of sales on account of lesion beyond moiety must be commenced within four years. These four years, with respect to minors, begin only from the day they become of age. With respect to persons of full age, they begin from the day of the sale.

ART. 2574.—This delay runs with and is not suspended by that granted for redemption.

ART. 2575.—The seller who demands the rescission on account of lesion beyond the moiety, must resume the possession of the thing, in the state in which it is.

The buyer, in this case, is not bound for the injury sustained through his fault before the demand. He is only bound to make reimbursement for such injuries as he has turned to his own profit.

ART. 2576.—The buyer is entitled to repayment for ameliorations which he has effected, although they be merely for pleasure and convenience.

ART. 2577.—He may remain in possession of the thing sold, until the seller has restored the price which he paid, together with his expenses.

ART. 2578.—The provisions, contained in the preceding section, relative to the case where several co-partners have sold a thing, either jointly or separately, and to that where the vendor has left several heirs, must likewise be applied to the exercise of the action of rescission.

6 L. 762.

CHAPTER IX.

OF SALES BY AUCTION OR PUBLIC SALES.

ART. 2579.—The sale by auction is that which takes place when the thing is offered publicly to be sold to whoever will give the highest price.

ART. 2580.—This sale is either voluntary or forced: voluntary, when the owner himself offers his property for sale in this manner; forced, when the law prescribes this mode of sale for certain property, such as that of minors.

ART. 2581.—The sale by auction, as it is made by officers of justice, is treated of separately, under the title of *judicial sale*.

ART. 2582.—The sale by auction, whether made at the will of the seller, or by direction of the law, is subjected to the rules hereafter mentioned.

ART. 2583.—It cannot be made directly by the seller himself, but must be made through the ministry of a public officer, appointed for that purpose.

ART. 2584.—This officer, after having received in writing, from the seller, the conditions of the sale, must proclaim them, in a loud and audible voice, and afterwards propose that a bid shall be made for the property thus offered.

3 L. 460; 13 L. 287; See 1841, 2253, 2256.

ART. 2585.—When the highest price offered has been cried long enough to make it probable that no higher will be offered, he who has made the offer, is publicly declared to be the purchaser, and the thing sold is adjudicated to him.

2 L. 498; 5 L. 360; 11 L. 285; 13 L. 290; 15 L. 385; 19 L. 235, 237; 9 R. 405, 414; 11 R. 270; 1 A. 440.

ART. 2586.—This adjudication is the completion of the sale; the purchaser becomes the owner of the object adjudged, and the contract is, from that time, subjected to the same rules which govern the ordinary contract of sale.

ART. 2587.—If the adjudication be made on condition that the price shall be paid in cash, the auctioneer may require the price immediately, before delivering possession of the thing sold.

ART. 2588.—If the object adjudged is an immovable or a slave, for which the law requires that the act of sale shall be passed in writing, the purchaser may retain the price, and the seller the possession of the thing, until the act be passed.

This act ought to be passed within twenty-four hours after the adjudication, if one of the parties require it: he who occasions a further delay, is responsible to the other in damages.

4 L. 392; 6 L. 154; 3 R. 357.

ART. 2589.—In all cases of sale by auction, whether of movables, or of slaves or immovables, if the person to whom adjudication is made, does not pay the price at the time required, agreeably to the two preceding articles, the seller at the end of ten days, and after the customary notices, may again expose to public sale the thing sold, as if the first adjudication had never been made; and if at the second crying, the thing is adjudged for a smaller price than that which had been offered by the person to whom the first adjudication was made, the latter remains a debtor to the vendor, for the deficiency, and for all the expenses incurred subsequent to the first sale. But if a higher price is offered for the thing, than that for which it was first adjudged, the first purchaser has no claim for the excess.

6 N. S. 229; 2 L. 401; 4 L. 392; 6 L. 151; 7 L. 508; 14 L. 114, 559; 15 L. 391, 394.

ART. 2590.—At this second crying, the first purchaser cannot be allowed to bid, either directly or through the intervention of another person.

4 L. 392; 19 L. 21; 4 A. 242.

ART. 2591.—When a thing is exposed to public sale, with notice that the buyer shall give indorsed notes for the price, he is bound, immediately after the sale, if required, to acquaint the auctioneer or the seller with the name of the person whom he offers for indorser, and if this indorser does not suit the seller, or, in his absence, the auctioneer, the adjudication is considered as not having been made.

ART. 2592.—The refusal by the seller to receive the indorser whom the purchaser offers, renders him responsible in damages to the latter if it be proved that the indorser proposed is good and solvent.

ART. 2593.—The adjudication can only be made to a bidder present, or properly represented. The person who bids in the name of another, without sufficient authority to bind him, is considered as having bought on his own account, and is answerable for all the consequences of the adjudication.

CHAPTER X.

OF JUDICIAL SALES.

ART. 2594.—Sales which are made by authority of law, are of two kinds :

1. Those which take place when the property of a debtor has been seized by order of a court, to be sold for the purpose of paying the creditor ;

2. Those which are ordered in matters of succession or partition.

ART. 2595.—Judicial sales are subject to the rules laid down above for public sales in general, in all such things as are not contrary to the formalities expressly prescribed for such sales, and with the modifications contained hereafter.

1 A. 440.

SECTION I.—Of Sales on Seizure or Execution.

ART. 2596.—The sale on seizure is made at public auction by the sheriff or other officer charged with the execution of the judgment.

ART. 2597.—Whatever may be the vices of the thing sold on execution, they do not give rise to the redhibitory action ; but the sale may be set aside in the case of fraud, and declared null in cases of nullity.

3 A. 326.

ART. 2598.—The sale on execution transfers the property of the thing to the purchaser as completely as if the owner had sold it himself ; but it transfers only the rights of the debtor, such as they are.

3 A. 326.

ART. 2599.—The purchaser evicted from property purchased under execution, shall have his recourse for reimbursement against the debtor and creditor ; but, upon the judgment obtained jointly for that purpose, the purchaser shall first take execution against the debtor, and upon the

return of such execution no property found, then he shall be at liberty to take out execution against the creditor.

10 R. 65; 3 A. 326.

SECTION II.—*Of the Judicial Sale of the Property of Successions.*

ART. 2600.—The judicial sale of succession property is made by the judge or clerk of the court to which this jurisdiction is specially confided.

Stat. 7th April, 1847, p. 73.—It shall be the duty of the judge of the court in which a succession is opened, to order the sale of all property belonging to the succession to be made by either the sheriff of the parish, or by such auctioneer or auctioneers as may be appointed or named by the person administering said succession.

ART. 2601.—The adjudication made and recorded by the judge or clerk of the court, is a complete title to the purchaser, and needs not be followed by an act passed before a notary.

2 L. 498; 9 L. 180; 1 A. 200; 3 A. 150.

ART. 2602.—All the warranties to which private sales are subject, exist against the heir in judicial sales of the property of successions.

See 2515.

ART. 2603.—Heirs may purchase the property of the succession to the amount of their proportion, and are not obliged to pay the purchase money, until a liquidation is had, by which it is ascertained what balance there is in their favor or against them.

12 R. 666.

CHAPTER XI.

OF THE COMPULSORY TRANSFER OF PROPERTY.

ART. 2604.—The first law of society being that the general interest shall be preferred to that of individuals, every individual, who possesses, under the protection of the laws, any particular property, is tacitly subjected to the obligation of yielding it to the community, whenever it becomes necessary for the general use.

11 L. 86; 12 R. 552.

ART. 2605.—If the proprietor of a thing necessary for the general use, refuses to yield it, or demands an exorbitant price, he may be divested of the property by the authority of law.

ART. 2606.—In all cases, a fair price should be given to the owner for the thing of which he is dispossessed.

ART. 2607.—This price ought to be paid to him before the expropriation, that is to say, before he has delivered the possession, or it has been finally taken from him, in case of resistance.

ART. 2608.—For the purpose of ascertaining this fair price, the judge, within whose jurisdiction the property to be taken for the common use is situated, shall cause to be convoked, within eight days by the sheriff, a jury of twelve freeholders, who, after having been duly

sworn, shall declare what sum the property is worth, regard being had not only to the general value of property of the same nature and quality but to the particular value which it may possess in relation to the rest of the estate from which it is to be dismembered, and to the injury which this dismemberment may cause to the owner.

ART. 2609.—The owner shall be summoned at the same time, to appear before this jury, to defend his rights, and he may challenge for cause any of the members in the same manner as he might challenge ordinary jurors.

ART. 2610.—The verdict of the jury, and the judgment which shall be founded on it, are conclusive, except on appeal.

ART. 2611.—If, after the expropriation, any individual pretends that he had rights respecting the thing, either as owner or as creditor, he shall have recourse against the person who received the price.

CHAPTER XII.

OF THE ASSIGNMENT OR TRANSFER OF DEBTS AND OTHER INCORPOREAL RIGHTS.

ART. 2612.—In the transfer of debts, rights or claims to a third person, the delivery takes place between the transferor and the transferee by the giving of the title.

2 L. 432; 12 L. 91; 11 L. 13; 1 R. 26; 11 R. 293; 4 A. 453; See 8 L. 536; 3 R. 432; 10 R. 25; See 2107, 2149, 2624.

ART. 2613.—The transferee is only possessed, as it regards third persons, after notice has been given to the debtor of the transfer having taken place.

The transferee may nevertheless become possessed by the acceptance of the transfer by the debtor in an authentic act.

6 N. S. 238, 332; 4 N. S. 56; 5 N. S. 21; 2 L. 422, 425; 8 L. 536; 14 L. 13; 1 R. 26; 11 R. 293; 3 A. 220, 222; See 17 L. 471; 8 R. 259; 9 R. 207; 12 R. S. 409; 4 A. 356.

ART. 2614.—If, previous to notice having been given of the transfer to the debtor, either by the transferor or by the transferee, the debtor should have made payment to the transferor, the debtor is discharged of the debt.

3 A. 220; See 12 R. 8.

ART. 2615.—The sale or transfer of a debt includes every thing which is an accessory to the same as suretyship, privileges and mortgages.

4 A. 65.

ART. 2616.—He who sells a debt or an incorporeal right, warrants its existence at the time of the transfer, though no warranty be mentioned in the deed.

14 L. 423; 2 A. 880.

ART. 2617.—The seller does not warrant the solvency of the debtor, unless he has agreed so to do.

14 L. 423; 3 A. 716.

ART. 2618.—When the solvency of a debtor is warranted by contract, such warrant extends only to the actual solvency of the debtor, and not to his future solvency, unless the same be expressly submitted to by the transferor.

ART. 2619.—If it be proved that the assignor, who has not warranted the solvency of the debtor, knew or had strong reasons to suspect that the debtor was insolvent at the time of the assignment, the contract may be rescinded, and the assignor compelled to restore the price.

3 A. 716.

ART. 2620.—When a man sells his right to a succession, without particularly specifying the objects of which it consists, he only warrants his right as an heir.

ART. 2621.—In case he who sells his right to a succession has already received any of the fruits of any property belonging to the same, and if any debt due to that succession has been paid to him, he shall be bound to repay the same to the purchaser, unless the same has been excepted by the contract.

ART. 2622.—He against whom a litigious right has been transferred, may get himself released by paying to the transferee the real price of the transfer, together with the interest from its date.

12 L. 205; 6 R. 172; 11 R. 124; 2 A. 79, 615; 3 A. 626; 4 A. 101; 6 A. 237.

ART. 2623.—A right is said to be litigious, whenever there exists a suit and contestation on the same.

12 L. 123; 2 A. 437; 3 A. 552, 626; 6 A. 232.

ART. 2624.—The provisions of article 2622 do not apply :

1. When the transfer has been made either to a co-heir or to the co-proprietor of the right ;

2. When such right has been transferred to a creditor as a payment for a debt due to him ;

12 L. 205; See 2 A. 611; See 2612.

3. When the transfer has been made to the possessor of the inheritance subject to the litigious right.

CHAPTER XIII.

OF THE GIVING IN PAYMENT.

ART. 2625.—The giving in payment is an act by which a debtor gives a thing to the creditor, who is willing to receive it, in payment of a sum which is due.

ART. 2626.—The giving in payment differs from the ordinary contract of sale in this, that the latter is perfect by the mere consent of the parties, even before the delivery, while the giving in payment is made only by delivery.

ART. 2627.—From this distinction result consequences which are different in relation to the risk of the thing sold, which, in this species of contract, never falls upon the creditor, before delivery, unless he has delayed beyond a reasonable time to obtain it.

ART. 2628.—This difference gives rise to another in the effect of these contracts, in cases of the insolvency of the debtor. He may, although insolvent, lawfully sell for the price which is paid to him, but the law forbids to give in payment to one creditor, to the prejudice of the others, any other thing than the sum of money due.

ART. 2629.—Except with these differences, the giving in payment is subjected to all the rules which govern the ordinary contract of sale.

1 A. 816.

TITLE VIII.

OF EXCHANGE.

ART. 2630.—An exchange is a contract, by which the contractors give to one another, one thing for another, whatever it be, except money, for in that case it would be a sale.

ART. 2631.—An exchange takes place by the bare consent of the parties.

ART. 2632.—If one of the exchangers, after having received the thing given to him in exchange, learn that the other exchanger is not the proprietor of that thing, he cannot be compelled to deliver that which he had promised to give in exchange; he is only bound to return the thing which he has received.

ART. 2633.—The exchanger, who is evicted by a judgment of the thing he has received in exchange, has his choice either to sue for damages or for the thing he gave in exchange.

4 A. 219.

ART. 2634.—The rescission of contract on account of lesion is not allowed in contracts of exchange, except in the following cases.

ART. 2635.—The rescission on account of lesion beyond moiety, takes place, when one party gives immovable property to the other in exchange for movable property; in that case, the person having given the immovable estate may obtain a rescission, if the movables which he has received are not worth more than the one-half of the value of the real estate.

But he who has given movable property in exchange for immovable estate, cannot obtain a rescission of the contract, even in case the things given by him were worth twice as much as the immovable estate.

ART. 2636.—The rescission on account of lesion beyond moiety, may take place on a contract of exchange, if a balance has been paid in money or in movable property, and if the balance paid exceeds by one moiety the total value of the immovable property given in exchange by the person to whom the balance has been paid; in that case it is only the person who has paid such balance who may demand the rescission of the contract on account of lesion.

ART. 2637.—All the other provisions relative to the contract of sale apply to the contract of exchange.

And in this contract each of the parties is individually considered in the double character of vendor and vendee.

3 A. 716; 4 A. 219.

TITLE IX.

OF LETTING AND HIRING.

ART. 2638.—The contract of lease or letting out, besides the rules to which it is subject in common with other agreements, and which are explained under the title of *conventional obligations*, is governed by certain particular rules, which are the subject of the present title.

CHAPTER I.

OF THE NATURE OF THE CONTRACT OF HIRE, AND OF ITS SEVERAL KINDS.

ART. 2639.—Lease or hire is a synallagmatic contract, to which consent alone is sufficient, and by which one party gives to the other the enjoyment of a thing, or his labor, at a fixed price.

ART. 2640.—To this contract, as to that of sale, three things are absolutely necessary; to wit—the thing, the price, and the consent.

ART. 2641.—The price should be certain and determinate, and should consist of money. However, it may consist in a certain quantity of commodities, or even in a portion of the fruits yielded by the thing hired.

11 R. 279.

ART. 2642.—The price, notwithstanding, may be left to the award of a third person named and determined, and then the contract includes the condition that this person shall fix the price; and if he cannot or will not do it, there is no hiring.

The contract would be null, if the price were left to be fixed by a person not designated.

ART. 2643.—There are two species of contracts of letting and hiring; to wit—

1. The letting out of things;
2. The letting out of labor or industry.

ART. 2644.—To let a thing out is a contract by which one of the parties binds himself to grant to the other the enjoyment of a thing during a certain time, for a certain stipulated rent or hire which the other binds himself to pay him.

ART. 2645.—To let out labor or industry is a contract by which one of the parties binds himself to do something for the other, in consideration of a certain price agreed on by them both.

CHAPTER II.

OF LETTING OUT THINGS.

SECTION I.—*General Provisions.*

ART. 2646.—The letting out of things is of two kinds; to wit—

1. The letting out houses and movables;
2. The letting out predial or country estates.

ART. 2647.—He who grants a lease is called the *owner* or *lessor*. He to whom a lease is made, is called the *lessee* or *tenant*. :

ART. 2648.—All corporeal things are susceptible of being let out, movable as well immovable, excepting those which cannot be used without being destroyed by that very use.

ART. 2649.—Certain incorporeal things may also be let out, such as a right of toll, and the like; but there are some which cannot be the object of hire, such as a credit.

ART. 2650.—A right of service cannot be leased separately from the property to which it is annexed.

ART. 2651.—He who possesses a thing belonging to another, may let it to a third person, but he cannot let it for any other use than that to which it is usually applied.

ART. 2652.—He who lets out the property of another, warrants the enjoyment of it against the claim of the owner.

ART. 2653.—Leases may be made either by written or verbal contract.

2 L. 157.

ART. 2654.—The duration and the conditions of the leases are generally regulated by contract, or by mutual consent.

ART. 2655.—If the renting of a house or other edifice, or of an apartment, has been made without fixing its duration, the lease shall be considered to have been made by the month.

2 L. 157; 6 R. 262; 1 A. 17.

ART. 2656.—The parties must abide by the agreement as fixed at the time of the lease. If no time for its duration has been agreed on, the party desiring to put an end to it, must give notice in writing to the other, at least fifteen days before the expiration of the month, which has begun to run.

1 R. 262; 1 A. 17; See 11 L. 394.

ART. 2657.—The lease of a predial estate, when the time has not been specified, is presumed to be for one year, as that time is necessary in this State to enable the farmer to make his crop, and to gather in all the produce of the estate which he has rented.

ART. 2658.—If, after the lease of a predial estate has expired, the farmer should still continue to possess the same during one month without any step having been taken, either by the lessor or by a new lessee, to cause him to deliver up the possession of the estate, the former lease shall continue subject to the same clauses and conditions which it contained, but it shall continue only for the year next following the expiration of the lease.

ART. 2659.—If the tenant either of a house or of a room should continue in possession for a week after his lease has expired, without any opposition being made thereto by the lessor, the lease shall be presumed to have been continued, and he cannot be compelled to deliver up the house or room, without having received the legal notice or warning directed by article 2656.

2 L. 161; 4 L. 197; 6 R. 262; 1 A. 17.

ART. 2660.—In the cases provided for in the two preceding articles, the security given for the payment of the rent shall not extend to the obligations resulting from the lease being thus prolonged.

ART. 2661.—When notice has been given, the tenant, although he may have continued in possession, cannot pretend that there has been a tacit renewal of the lease.

SECTION II.—*Of the Obligations and Rights of the Lessor.*

ART. 2662.—The lessor is bound from the very nature of the contract, and without any clause to that effect :

1. To deliver the thing leased to the lessee ;
2. To maintain the thing in a condition such as to serve the use for which it is hired ;
3. To cause the lessee to be in peaceable possession of the thing during the continuance of the lease.

ART. 2663.—The lessor is bound to deliver the thing in good condition, and free from any repairs. He ought to make, during the continuance of the lease, all the repairs which may accidentally become necessary ; except those which the tenant is bound to make, as hereafter directed.

See 4 R. 428; 8 R. 168; 5 A. 713.

ART. 2664.—If the lessor do not make the necessary repairs in the manner required in the preceding article, the lessee may call on him to do it. If he refuse or neglect to make them, the lessee may himself cause them to be made, and deduct the price from the rent due, on proving that the repairs were indispensable, and that the price which he has paid, was just and reasonable.

1 A. 421.

ART. 2665.—The lessor guarantees the lessee against all the vices and defects of the thing, which may prevent its being used, even in case it should appear that he knew nothing of the existence of such vices and defects, at the time the lease was made, and even if they have arisen since, provided they do not arise from the fault of the lessee ; and if any loss should result to the lessee from the defect, the lessor shall be bound to indemnify him for the same.

4 L. 223; 6 A. 488.

ART. 2666.—If the lessee be evicted, the lessor is answerable for the damage and loss which he sustains by the interruption of the lease.

ART. 2667.—If, during the lease, the thing be totally destroyed by an unforeseen event, or if it be taken for a purpose of public utility, the lease is at an end. If it be only destroyed in part, the lessee may either demand a diminution of the price, or a revocation of the lease. In neither case has he any claim for damages.

14 L. 501; See 5 L. 482.

ART. 2668.—The lessor has not the right to make any alteration in the thing, during the continuance of the lease.

ART. 2669.—If, without any fault of the lessor, the thing ceases to be fit for the purpose for which it was leased, or if the use be much impeded, as if a neighbor, by raising his walls, shall intercept the light of a house leased, the lessee may, according to circumstances, obtain the annulment of the lease, but has no claim for indemnity.

ART. 2670.—If during the continuance of the lease, the thing leased should be in want of repairs, and if those repairs cannot be postponed until the expiration of the lease, the tenant must suffer such repairs to be made, whatever be the inconveniency he undergoes thereby, and though he be deprived either totally or in part of the use of the thing leased to him, during the making of the repairs. But in case such repairs should continue for a longer time than one month, the price of the rent shall be lessened in proportion to the time during which the repairs have continued, and to the parts of the tenement of the use of which the lessee has thereby been deprived.

And the whole of the rent shall be remitted, if the repairs have been of such nature as to oblige the tenant to leave the house or the room, and to take another house, while that which he had leased was repairing.

11 L. 193.

ART. 2671.—If, in the lease of a predial estate, the premises have been stated to be of a greater extent than they in reality are, the lessee may claim an abatement of the rent, in the cases and subject to the provisions prescribed in the title of *sale*.

ART. 2672.—The lessor, and not the lessee, unless there be a stipulation to the contrary, must bear all the real charges with which the thing leased is burdened. Thus he has to pay the taxes rents and other dues imposed upon the thing leased.

11 R. 225.

ART. 2673.—The lessor is not bound to guarantee the lessee against disturbance caused by persons not claiming any right to the premises; but in that case the lessee has a right of action for damages sustained against the person occasioning such disturbance.

11 L. 173.

ART. 2674.—If the persons by whom those acts of disturbance have been committed, pretend to have a right to the thing leased, or if the lessee is cited to appear before a court of justice to answer to the complaint of the persons thus claiming the whole or a part of the thing leased, or claiming some species of services on the same, he shall call the lessor in warranty, and shall be dismissed from the suit, if he wishes it, by naming the person under whose rights he possesses.

ART. 2675.—The lessor has, for the payment of his rent, and other obligations of the lease, a right of pledge on the movable effects of the lessee, which are found on the property leased.

In the case of predial estates, this right embraces every thing that serves for the labors of the farm, the furniture of the lessee's house, and the fruits produced during the lease of the land: and in the case of houses and other edifices, it includes the furniture of the lessee, and the merchandise contained in the house or apartment, if it be a store or shop.

Stat. 11th February, 1852, p. 13.—The lessee shall be entitled to re-

tain, out of the property subjected by law to the lessor's privilege, his clothes and linen and those of his wife and family; his bed, and those of his wife and family; his arms, military accoutrements, and the tools and instruments necessary for the exercise of the trade or profession by which he gains his living, and that of his family.

6 R. 292; 4 A. 144; 5 A. 712; See 3 L. 511; 17 L. 443; 18 L. 500; 5 R. 213.

ART. 2676.—This right includes, not only the effects of the principal lessee or tenant, but those of the under-tenant, so far as the latter is indebted to the principal lessee, at the time when the proprietor chooses to exercise his right.

A payment made in anticipation, by the under-tenant to his principal, does not release him from the owner's claim.

3 L. 11, 15; 13 L. 498; 6 R. 292; 11 R. 225; See 5 L. 213.

ART. 2677.—This right of pledge affects, not only the movables of the lessee and under-lessee, but also those belonging to third persons, when their goods are contained in the house or store, by their own consent, express or implied.

13 L. 448; 6 R. 292; 11 R. 225; See 5 R. 213.

ART. 2678.—Movables are not subject to this right, when they are only transiently or accidentally in the house, store, or shop, such as the baggage of a traveller in an inn, merchandise sent to a workman to be made up or repaired, and effects lodged in the store of an auctioneer to be sold.

3 L. 509.

ART. 2679.—In the exercise of this right, the lessor may seize the objects, which are subject to it, before the lessee takes them away, or within fifteen days after they are taken away, if they continue to be the property of the lessee, and can be identified.

SECTION III.—*Of the Obligations and Rights of the Lessee.*

ART. 2680.—The lessee is bound:

1. To enjoy the thing leased as a good administrator, according to the use for which it was intended by the lease;

2. To pay the rent at the terms agreed on.

2 N. S. 451; 13 L. 193.

ART. 2681.—If the lessee makes another use of the thing than that for which it was intended, and if any loss is thereby sustained by the lessor, the latter may obtain the dissolution of the lease.

The lessee, in that case, shall be bound to pay the rent, until the thing is again leased out; and the lessee is also liable for all the losses which the proprietor may have sustained through his misconduct.

1 A. 421.

ART. 2682.—The lessee may be expelled from the tenement, if he fails to pay the rent when it becomes due.

12 L. 361; 1 A. 180, 421.

ART. 2683.—When the lessor has given notice to the lessee, in the

manner directed by the law, to quit the property, and the lessee persists in remaining on it, the lessor may have him summoned before a justice of the peace, and condemned to depart; and if, three days after notice of the judgment, he has not obeyed, the justice of the peace may order that he shall be expelled, and that the property shall be cleared by the constable, at his expense.

S N. S. 563; 10 R. 407; 1 A. 150; See 11 R. 394.

ART. 2684.—The constable, charged with the execution of this order, may force the doors and windows, if they are shut, and seize and sell such portion of the effects of the lessee as may be necessary to pay the costs.

10 R. 407.

ART. 2685.—The lessee is bound to cause all necessary repairs to be made which it is incumbent on lessees to make, unless the contrary hath been stipulated.

ART. 2686.—The repairs, which must be made at the expense of the tenant, are, those which, during the lease, it becomes necessary to make :

To the hearth, backs of chimneys and chimney casings;

To the plastering of the lower part of interior walls;

To the pavement of rooms, when it is but partially broken, but not when it is in a state of decay;

For replacing window glass, when broken accidentally, but not when broken either in whole or in their greatest part by a hail-storm or by any other inevitable accident;

To windows, shutters, partitions, shop windows, locks and hinges, and every thing of that kind, according to the custom of the place.

4 L. 160; See 1961.

ART. 2687.—The expenses of the repairs, which unforeseen events or decay may render necessary, must be supported by the lessor, though such repairs be of the nature of those which are usually done by the lessee.

14 L. 501.

ART. 2688.—The cleaning of wells and necessities shall be at the expense of the lessor, unless the contrary has been stipulated.

ART. 2689.—If an inventory has been made of the premises, in which the situation, at the time of the lease, has been stated, it shall the duty of the lessee to deliver back every thing in the same state in which it was, when taken possession of by him, making however the necessary allowance for wear and tear and for unavoidable accidents.

ART. 2690.—If no inventory has been made, the lessee is presumed to have received the thing in good order, and he must return it in the same state, with the exceptions contained in the preceding article.

ART. 2691.—The lessee is only liable for the injuries and losses sustained through his own fault.

ART. 2692.—He is however liable for the waste committed by the persons of his family, or by those to whom he may have made a sub-lease.

ART. 2693.—He can only be liable for the destruction occasioned by fire, when it is proved that the same has happened either by his own fault or neglect, or by that of his family.

ART. 2694.—It is the duty of a farmer of predial estate, to prevent the same being encroached upon, and in case of such encroachment, to

give notice to the proprietor, in defect of which he shall be liable in damages.

ART. 2695.—It is the duty of a person, who has one or several slaves on hire, to give immediate notice to the owner, should any of them happen to get sick or to run away; in default thereof he shall be liable in damages.

6 A. 804.

ART. 2696.—The lessee has the right to under-lease, or even to cede his lease to another person, unless this power has been expressly interdicted.

18 L. 73.

The interdiction may be for the whole, or for a part; and this clause is always construed strictly.

4 A. 40.

ART. 2697.—The lessee has a right to remove the improvements and additions which he has made to the thing let, provided he leaves it in the state in which he received it.

But if these additions be made with lime and cement, the lessor may retain them, on paying a fair price.

1 A. 421; See 2 R. 66.

SECTION IV.—*Of the Dissolution of Leases.*

ART. 2698.—The lease ceases of course, at the expiration of the time agreed on.

ART. 2699.—It is also dissolved by the loss of the thing leased.

14 L. 501.

ART. 2700.—The neglect of the lessor or lessee to fulfil their engagements, may also give cause for a dissolution of the lease, in the manner expressed concerning contracts in general, except that the judge cannot order any delay of the dissolution.

1 A. 421; 4 A. 40.

ART. 2701.—A lease made by one having a right of usufruct, ends when the right of usufruct ceases.

The lessee has no right to an indemnification from the heirs of the lessor, if the lessor has made known to him the title under which he possessed.

ART. 2702.—A contract for letting out is not dissolved by the death of the lessor, nor by that of the lessee; their respective heirs are bound by the contract.

ART. 2703.—The lessor cannot dissolve the lease for the purpose of occupying himself the premises, unless that right has been reserved to him by the contract.

ART. 2704.—If the lessor sells the thing leased, the purchaser cannot turn out the tenant before his lease has expired, unless the contrary has been stipulated in the contract.

ART. 2705.—If the lessor has reserved to himself in the agreement, the right of taking possession of the thing leased, whenever he should think proper, he is not bound to make any indemnification to the lessee, unless it be specified by the contract; the lessor is only bound in that case, to give him the legal notice or warning prescribed in article 2656

ART. 2706.—If it has been agreed by the parties, at the time the lease was made, that in case the property was sold, the purchaser should be at liberty to take immediate possession, and if no indemnification has been stipulated, the lessor shall be bound to indemnify the lessee in the following manner :

ART. 2707.—If it be a house, room, or shop, the lessor shall pay as an indemnification to the evicted tenant, a sum equal to the amount of the rent, for the time, which, according to the article 2656, is to elapse between the notice and the going out.

10 L. 22.

ART. 2708.—If it be a predial estate, the indemnification to be paid by the lessor to the evicted farmer, shall be the third of the price of the rent, during time which has yet to elapse.

ART. 2709.—The quantum of damages shall be determined by skillful men, when the controversy relates to manufactures, mines and things of that kind, which require great disbursements.

ART. 2710.—The purchaser who wishes to use the right reserved by the lease, is moreover bound to give previous notice to the tenant according to article 2656.

The farmers of predial estates shall have one year's notice.

ART. 2711.—Previous to the expulsion of a farmer or tenant, the before prescribed indemnifications must be paid to him, either by the lessor, or, in his default, by the new purchaser.

ART. 2712.—If the lease has not been reduced to writing, the purchaser cannot be compelled to give any indemnification.

ART. 2713.—A person who has purchased an estate, the former proprietor of which has reserved by contract the right of redemption, cannot turn out the lessee, until, by the expiration of the time fixed for the redemption, the purchaser becomes the irrevocable owner.

ART. 2714.—The tenant of a predial estate cannot claim an abatement of the rent, under the plea that, during the lease, either the whole, or a part of his crop, has been destroyed by accidents, unless those accidents be of such an extraordinary nature, that they could not have been foreseen by either of the parties at the time the contract was made, such as the ravages of war extending over a country then at peace, and where no person entertained any apprehension of being exposed to invasion or the like.

But even in these cases, the loss suffered must have been equal to the value of one-half of the crop at least, to entitle the tenant to an abatement of the rent.

The tenant has no right to an abatement, if it is stipulated in the contract, that the tenant shall run all the chances of all foreseen and unforeseen accidents.

ART. 2715.—The tenant cannot obtain an abatement, when the loss of the fruit takes place after its separation from the earth, unless the lease gives to the proprietor a portion of the crop in kind, in which case the proprietor ought to bear his share of the loss, provided the tenant has committed no unreasonable delay in delivering his portion of the crop.

CHAPTER III.

OF THE LETTING OUT OF LABOR OR INDUSTRY.

ART. 2716.—Labor may be let out in three ways :

1. Laborers may hire their services to another person ;
2. Carriers and watermen hire out their services for the conveyance .
either of persons or of goods and merchandise ;
3. Workmen hire out their labor or industry to make buildings or other works.

SECTION I.—*Of the Hiring of Servants and Workmen.*

ART. 2717.—A man can only hire out his services for a certain limited time, or for the performance of a certain enterprise.

ART. 2718.—A man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause.

8 L. 185.

ART. 2719.—Laborers who hire themselves out to serve on plantations, or to work in manufactures, have not the right of leaving the person who has hired them, nor can they be sent away by the proprietor, until the time has expired during which they had agreed to serve, unless good and just causes can be assigned.

8 L. 185; 12 L. 69; 1 R. 319, 332.

ART. 2720.—If, without any serious ground of complaint, a man should send away a laborer whose services he has hired for a certain time, before that time has expired, he shall be bound to pay to such laborer the whole of the salaries which he would have been entitled to receive, had the full term of his services arrived.

3 L. 299; 8 L. 185; 12 L. 67; 15 L. 371; 1 R. 319, 332; 12 R. 648.

ART. 2721.—But if, on the other hand, a laborer, after having hired out his services, should leave his employer, before the time of his engagement has expired, without having any just cause of complaint against his employer, the laborer shall then forfeit all the wages that may be due to him, and shall moreover be compelled to repay all the money he has received, either as due for his wages, or in advance thereof on the running year or on the time of his engagement.

11 L. 369, 373; 12 L. 69; 1 R. 319, 332.

SECTION II.—*Of Carriers and Watermen.*

ART. 2722.—Carriers and watermen are subject, with respect to the safe keeping and preservation of the things intrusted to them, to the same obligations and duties which are imposed on tavern-keepers in the title of *deposit and sequestration*.

1 R. 410; 11 R. 24.

ART. 2723.—They are answerable, not only for what they have actu-

ally received in their vessel or vehicle, but also for what has been delivered to them at the port or place of deposit, to be placed in the vessel or carriage.

See 9 L. 33.

ART. 2724.—The price of a passage agreed for to be paid by a woman, for going by sea from one country to another, shall not be increased, in case the woman has a child during the voyage, whether her pregnancy was known or not by the master of the ship.

ART. 2725.—Carriers and watermen may be liable for the loss or damage of the things intrusted to their care, unless they can prove that such loss or damage has been occasioned by accidental and uncontrollable events.

4 L. 223; 9 L. 33; 1 R. 410; 11 R. 24; 5 A. 706; See 1 L. 349; 8 N. S. 120; 10 R. 434; 6 M. 682.

ART. 2726.—The masters of ships and other vessels, and their crews, have a privilege on the ship, for the wages due them on the last voyage.

SECTION III.—*Of Plots for Buildings and other Works.*

ART. 2727.—To build by a plot, or to work by the job, is to undertake a building or a work for a certain stipulated price.

2 A. 549.

ART. 2728.—A person who undertakes to make a work, may agree, either to furnish his work and industry alone, or to furnish also the materials necessary for such a work.

ART. 2729.—When the undertaker furnishes the materials for the work, if the work be destroyed, in whatever manner it may happen, previous to its being delivered to the owner, the loss shall be sustained by the undertaker, unless the proprietor be in default for not receiving it, though duly notified to do so.

See 9 L. 435.

ART. 2730.—When the undertaker only furnishes his work and industry, should the thing be destroyed the undertaker is only liable, in case the loss has been occasioned by his fault.

ART. 2731.—In the case mentioned in the preceding article, if the thing be destroyed by accident and not owing to any fault of the undertaker, before the same be delivered, and the owner be in default for not receiving it, the undertaker shall not be entitled to his salaries, unless the destruction be owing to the badness of the materials used in the building.

In line 3, after the word "and," read "without the owner being," &c., See French text.

ART. 2732.—If the work be composed of detached pieces, or made at the rate of so much a measure, it may be delivered separately, and that delivery shall be presumed to have taken place, if the proprietor has paid to the undertaker the price due for the parts of the work which have already been completed.

9 L. 23.

ART. 2733.—If a building which an architect or other workman has undertaken to make by the job, should fall to ruin either in whole or in part, on account of the badness of the workmanship, the architect or undertaker shall bear the loss, if the building falls to ruin in the course of

ten years, if it be a stone or brick building and of five years if it be built of wood or with frames filled with bricks.

ART. 2734.—When an architect or other workman has undertaken the building of a house by the job, according to a plan agreed on between him and the proprietor of the ground, he cannot claim an increase of the price agreed on, on the plea of the original plan having been changed and extended, unless he can prove that such changes have been made in compliance with the wishes of the proprietor.

2 L. 490; 4 R. 399; 5 R. 179; 9 R. 402; 10 R. 94.

ART. 2735.—An exception is made to the above provision, in a case where the alteration or increase is so great, that it cannot be supposed to have been made without the knowledge of the owner, and also where the alteration or increase was necessary, and has not been foreseen.

4 L. 101; 14 L. 342.

ART. 2736.—The proprietor has a right to cancel at pleasure the bargain he has made, even in case the work has already been commenced, by paying the undertaker for the expense and labor already incurred, and such damages as the nature of the case may require.

2 L. 331; 6 L. 656; 8 L. 147; 5 A. 220.

ART. 2737.—Contracts for hiring out work are cancelled by the death of the workman, architect, or undertaker, unless the proprietor should consent that the work should be continued by the heir or heirs of the architect, or by workmen employed for that purpose by the heirs.

3 A. 285.

ART. 2738.—The proprietor is only bound, in the former case, to pay to the heirs of the undertaker, the value of the work that has already been done, and of the materials already prepared, proportionably to the price agreed on, in case such work and materials may be useful to him.

3 A. 285.

ART. 2739.—The undertaker is responsible for the deeds of the persons employed by him.

ART. 2740.—If an undertaker fails to do the work he has contracted for, or if he does not execute it in the manner, and at the time he has agreed to do it, he shall be liable in damages for the losses that may ensue from his non-compliance with his contract.

3 L. 1, 325.

ART. 2741.—Masons, carpenters, and other workmen, who have been employed in the construction of a building or other works, undertaken by the job, have their action against the proprietor of the house on which they have worked, only for the sum which may be due by him to the undertaker at the time their action is commenced.

8 L. 536; 11 L. 453.

ART. 2742.—Masons, carpenters, blacksmiths, and all other artificers, who undertake work by the job, are bound by the provisions contained in the present section, for they may be considered as undertakers each in his particular line of business.

10 L. 231.

ART. 2743.—The undertaker has a privilege, for the payment of his labor, on the building or other work, which he may have constructed

Workmen employed immediately by the owner, in the construction or repair of any building, have the same privilege.

6 N. S. 169; 2 L. 487; 6 R. 333; 4 A. 97; 5 A. 431.

ART. 2744.—Workmen and persons furnishing materials, who have contracted with the undertaker, have no action against the owner who has paid him. If the undertaker be not paid, they may cause the moneys due him to be seized, and they are of right subrogated to his privilege.

2 L. 487; 8 L. 536; 11 L. 453; 6 R. 333, 532, 375; 4 A. 97; 5 A. 431.

ART. 2745.—The payments, which the proprietor may have made in anticipation to the undertaker, are considered, with regard to workmen and to those who furnish materials, as not having been made, and do not prevent them from exercising the right granted them by the preceding article.

2 L. 487; 8 L. 536; 11 L. 453; 6 R. 333; 4 A. 97; 6 A. 60.

ART. 2746.—No agreement or undertaking for work exceeding five hundred dollars, which has not been reduced to writing, and registered with the recorder of mortgages, shall enjoy the privilege above granted.

6 N. S. 476; 2 L. 487; 5 L. 94; 4 A. 97; 5 A. 431; 6 A. 63, 480; V. 2743, 3332.

ART. 2747.—For those not amounting to five hundred dollars, this formality is dispensed with; but the privilege granted to them is prescribed against after six months, reckoning from the day when the work is completed.

16 L. 293; See 15 L. 416.

ART. 2748.—Workmen employed in the construction or repair of ships and boats, enjoy the privilege established above, without being bound to reduce their contracts to writing, whatever may be their amount; but this privilege ceases, if they have allowed the ship or boat to depart without exercising their right.

TITLE X.

OF RENTS AND ANNUITIES.

ART. 2749.—There are two species of rent; that of land, which is properly called rent, and that of money.

CHAPTER I.

OF THE RENT OF LANDS.

ART. 2750.—The contract of rent for lands is a contract, by which one of the parties conveys and cedes to the other a tract of land, or any other immovable property, and stipulates that the latter shall hold it as owner, but reserving to the former an annual rent of a certain sum of

money, or of a certain quantity of fruits, which the other party binds himself to pay him.

ART. 2751.—It is of the essence of this conveyance that it be made in perpetuity. If it be made but for a limited time, it is a lease.

ART. 2752.—A contract of sale, in which it is stipulated that the price shall be paid at a future time, but that it bears interest from the day of sale, is not a contract of rent.

On the contrary, a contract made bearing the name of a sale, in which the seller does not stipulate the payment of the price, but a capital bearing interest forever, is a contract of rent.

1 A. 209.

ART. 2753.—The contract of rent partakes of the nature of sale and of lease :

Of sale, inasmuch as it transfers the property of the thing, and subjects the party to the same warranty which is imposed on the vendor ;

And of lease, inasmuch as it subjects the rentee to the payment of rent.

ART. 2754.—The contract of rent is subjected to the same rules as the contract of sale, except in the cases hereafter specified.

ART. 2755.—The thing, sold with reservation of rent, becomes the property of the person receiving it, in the same manner as a thing sold becomes the property of the purchaser ; but whereas the purchaser may make what use he pleases of the thing bought, and may even destroy it, when he has paid the price, the purchaser under reservation of rent is bound to preserve the thing in good condition, that it may continue capable of producing wherewith to pay the rent.

ART. 2756.—When a thing sold is destroyed from unforeseen accident, the loss falls entirely on the purchaser ; in case of a sale reserving rent, the loss is sustained by both parties ; for, on one side, the lessee loses the enjoyment of the thing ; and on the other, the lessor loses the right to demand the rent, which is extinguished.

But in order that the rent be extinguished, the thing must have perished entirely ; if it be lost only in part, the rent is only reducible in proportion to the loss.

ART. 2757.—A thing, sold and paid-for may be alienated absolutely and unconditionally ; but if it be sold with a rent reserved, it remains perpetually subject to the rent, into whatsoever hands it may pass.

1 A. 209.

ART. 2758.—The price of a thing sold is a debt personal to the purchaser. But where there has been rent reserved, it is a charge imposed on the property ; and the person alienating it, is only answerable for the arrears which became due, while he was in the possession.

1 A. 209.

ART. 2759.—The rent charge, although stipulated to be perpetual, is essentially redeemable. But the seller may determine the terms of the redemption, and stipulate that it shall not take place until after a certain time, which can never exceed thirty years.

ART. 2760.—If the value of the property has been determined by the contract, the possessor, who wishes to redeem, cannot be made to pay any thing beyond that value.

ART. 2761.—If there has been no valuation, the rent is considered as fixed at the rate of six per cent. on the value, and the lessee may pay the capital at that valuation.

ART. 2762.—The rentor has for the payment of his rent a right of mortgage on the property, commencing from the date of the contract. But he cannot have it seized and sold; unless there be at least one entire year's rent due.

1 A. 209.

ART. 2763.—The rent charge being inherent to the property burdened with it, is itself susceptible of being mortgaged, except where it has been gratuitously established for the benefit of a third person, on condition that it should not be liable to seizure.

1 A. 209.

CHAPTER II.

OF ANNUITIES.

ART. 2764.—The contract of annuity is that by which one party delivers to another a sum of money, and agrees not to reclaim it, so long as the receiver pays the rent agreed upon.

ART. 2765.—This annuity may be either perpetual or for life.

ART. 2766.—The amount of annuity for life can in no case exceed the double of the conventional interest.

The amount of perpetual annuity cannot exceed the conventional interest.

ART. 2767.—Constituted annuity is essentially redeemable.

The parties may only agree that the same shall not be redeemed prior to a time which cannot exceed ten years, or without having warned the creditor a time before, which they shall limit.

ART. 2768.—The debtor of a constituted annuity may be compelled to redeem the same :

1. If he ceases fulfilling his obligations during three years ;
2. If he does not give to the lender the securities promised by the contract.

ART. 2769.—If the debtor should fail, or be in a state of insolvency, the capital of the constituted annuity becomes exigible, but only up to the amount at which it is rated, according to the order of contribution amongst the creditors.

2 A. 129.

ART. 2770.—The debtor may be compelled by his security to redeem the annuity within the time which has been fixed in the contract, if any time has been fixed, or after ten years, if no mention be made of the time in the act.

ART. 2771.—The interest of the sums lent, and the arrears of con-

stituted and life annuity, cannot bear interest but from the day a judicial demand of the same has been made by the creditor, and when interest is due for at least one whole year.

TITLE XI.

OF PARTNERSHIP.

CHAPTER I.

GENERAL PROVISIONS.

ART. 2772.—Partnership is a synallagmatic and commutative contract made between two or more persons for the mutual participation in the profits which may accrue from property, credit, skill or industry, furnished in determined proportions by the parties.

3 A. 19, §19.

ART. 2773.—It may be made by all persons capable of contracting.

ART. 2774.—It is regulated by the rules laid down in the title of *conventional obligations*, in all things not differently provided for by this title.

ART. 2775.—All partnerships are null and void, which are formed for any purpose forbidden by law or good morals. But all the partners in such a partnership are liable *in solido* to third persons, who may contract with them without a knowledge of the illegal or immoral object of the partnership.

ART. 2776.—Partnerships must be created by consent of the parties.

ART. 2777.—A community of property does not of itself create a partnership, however that property may be acquired, whether by purchase, donation, accession, inheritance, or prescription.

17 L. 598.

ART. 2778.—The community of property, created by marriage, is not a partnership; it is the effect of a contract governed by rules prescribed for that purpose in this code.

ART. 2779.—Property, when brought into partnership, or acquired by it, and the profits, when they are kept undivided for the benefit of the partnership, are called partnership stock.

ART. 2780.—Property, credit, skill and industry being the sources from which the profits of a partnership may be drawn, each of the partners may furnish either or all of these, in such proportions as they may mutually agree.

11 R. 123.

ART. 2781.—By *credit*, in the foregoing article, is meant, not only a reputation for responsibility as to pecuniary concerns, but also any quality or other circumstance that may acquire the good will of others, and contribute to the prosperity of the partnership.

11 R. 123.

ART. 2782.—It is of the essence of this contract that a profit is contemplated, and that each of the parties is to partake therein; the proportion they are respectively to receive, is regulated by the stipulation of the parties, where they make any: where none are made for this purpose, the proportion is regulated by law.

ART. 2783.—It is not necessary under the last article, that the contract of partnership should provide for the actual partition of the profits. A stipulation that the profits should be converted into stock for the benefit of all the parties in determined proportions, is valid.

ART. 2784.—A participation in the profits of a partnership carries with it a liability to contribute between the parties to the expenses and losses. But the proportion, like that of the profits, may be regulated by the stipulation of the parties, and where they make none, is provided for by law.

ART. 2785.—A stipulation that one of the contracting parties shall participate in the profits of a partnership, but shall not contribute to losses, is void, both as it regards the partners and third persons. But in the case of a partnership *in commendam*, hereinafter provided for, the liability to loss may be limited to the amount of stock furnished.

1 R. 307; 3 A. 19.

ART. 2786.—The foregoing article does not prevent the partners, or any one of them, from making a donation of their or his profits, arising from the partnership stock, to another, or even from selling the same for a valuable consideration; but the donee or vendee is not on that account considered as a partner.

ART. 2787.—A partnership cannot be executor, curator, or tutor, and cannot exercise any other private office.

ART. 2788.—By private office, in this code, is meant such trust as relates solely to the interest or affairs of one or more designated individuals, but which cannot yet be executed without the assent of the magistrate.

ART. 2789.—The nomination of a partnership to any private office is not of itself void; where it is a trust susceptible of being exercised by more than one person, it shall be considered as a nomination of all the members of the partnership, individually, who belonged to it at the time of such nomination; where the trust can, by law, only be exercised by one person, the first named partner shall be deemed to have been the person intended.

ART. 2790.—A partnership may be appointed attorney or agent for the performance of any act or duty, which comes within the object for which the partnership is formed, and the responsibility of such trust or agency attaches to all the members, and they are also entitled to all the advantages resulting therefrom; although one of them may execute the

trust in the name of the partnership, unless it be differently provided in the appointment.

ART. 2791.—Where a partnership is appointed to perform a trust or agency, foreign to the object for which the partnership was formed, the appointment is not void, it may be performed in the name of the partnership, if all the partners assent, and then the like responsibilities and advantages attach to the parties as are set forth in the last preceding article; if the assent of all the parties be not given, the trust or agency cannot be performed under the power.

ART. 2792.—If the trust or agency is executed by writing, whether required by law to be so done or not, the assent required by the last article must also be in writing.

ART. 2793.—In an ordinary partnership, if a partner having no authority to make purchases for the joint account, shall make any purchase in the name of the partnership, or in his own name with the partnership funds, the other partners may elect whether they will take such purchase on the joint account or not.

ART. 2794.—The partnership property is liable to the creditors of the partnership, in preference to those of the individual partner; but the share of any partner may, in due course of law, be seized and sold to satisfy his individual creditors, subject to the debts of the partnership; but such seizure, if legal, operates as a dissolution of the partnership.

12 L. 370; 13 L. 279; 17 L. 599; 18 L. 323, 505; 2 R. 453; 9 R. 425; 11 R. 130; 2 A. 87, 810; 3 A. 189, 319, 456; 6 A. 81, 521.

CHAPTER II.

RULES RELATING TO THE DIFFERENT KINDS OF PARTNERSHIP.

SECTION I.—*Of the Division of Partnership.*

ART. 2795.—Partnerships are divided, as to their object, into commercial partnerships and ordinary partnerships.

12 R. 132; See 10 L. 419.

ART. 2796.—Commercial partnerships are such as are formed :

1. For the purchase of any personal property, and the sale thereof, either in the same state or changed by manufacture;
2. For buying or selling any personal property whatever, as factors or brokers;

3. For carrying personal property for hire, in ships or other vessels.

3 L. 496; 13 L. 300; 15 L. 154; 17 L. 599; 3 R. 130; 1 A. 146, 457; 2 A. 876; 3 A. 83; 5 A. 260; 6 A. 759.

ART. 2797.—Ordinary partnerships are all such as are not commercial; they are divided into universal and particular partnerships.

4 L. 106.

ART. 2798. Commercial partnerships are divided into two kinds, general and special; they form the subject of a title in the Commercial Code; but the articles of this title govern them in all points in which

there is no repugnance between the articles of this title and those contained in the Commercial Code. Where such repugnance exists, the latter must, as to commercial partnership, prevail.

ART. 2799.—There is also a species of partnership, which may be incorporated with either of the other kinds, called partnership *in commendam*.

See 7 R. 471.

SECTION II.—Of *Universal Partnerships*.

ART. 2800.—Universal partnership is a contract by which the parties agree to make a common stock of all the property they respectively possess; they may extend it to all property real or personal, or restrict it to personal only; they may, in other partnerships, agree that the property itself shall be common stock, or that the fruits only shall be such; but property which may accrue to one of the parties, after entering into the partnership, by donation, succession, or legacy, does not become common stock, and any stipulation to that effect, previous to the obtaining the property aforesaid, is void.

ART. 2801.—An universal partnership of profits includes all the gains that may be made from whatever source, whether from property or industry, with the restriction contained in the last article, and subject to all legal stipulations to be made by the parties.

ART. 2802.—If nothing more is agreed between the parties, than that there shall be a universal partnership, it shall extend only to the profits of the property each shall possess, and of their credit and industry.

ART. 2803.—If commercial business be carried on under an universal partnership, it must, as to that business, be governed by the rules prescribed by the Commercial Code.

ART. 2804.—Universal partnership shall only be contracted between persons, who are not respectively incapacitated by law from conveying to, or from receiving from each other, to the injury of others.

ART. 2805.—Universal partnership cannot be created without writing signed by the parties, and registered in the manner hereafter prescribed.

SECTION III.—Of *Particular Partnerships*.

ART. 2806.—Particular partnerships are such as are formed for any business not of a commercial nature.

17 L. 598.

ART. 2807.—If any part of the stock of this partnership consist of real estate, it must be in writing, and made according to the rules prescribed for the conveyance of real estate, and recorded as is hereafter prescribed with respect to partnerships *in commendam*.

2 A. 810; 3 A. 464.

ART. 2808.—The business of this partnership must be conducted in the name of all the persons concerned, unless a firm is adopted by

the articles of partnership reduced to writing, and recorded in the manner directed by the last article.

ART. 2809. If the articles be recorded, the parties may themselves adopt a firm which shall be composed of the name of one or more of the partners, but no other name than those of the parties concerned shall enter in such firm.

SECTION IV.—Of Partnership in Commendam.

ART. 2810.—Partnership *in commendam* is formed by a contract, by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished, and no more.

7 R. 471.

ART. 2811.—He who makes this contract, is called, with respect to those to whom he makes the advance of capital, a partner *in commendam*. Every species of partnership may receive such partners. It is therefore a modification, of which the several kinds of partnerships are susceptible, rather than a separate division of partnerships.

7 R. 471.

ART. 2812.—The proportion of profits to be received by the partner *in commendam*, may be regulated by the covenant of the parties, as may also, with respect to each other, the proportion of losses and expenses to be borne by each of the partners; but, as respects third persons, the whole sum furnished, or agreed to be furnished by such partner, is liable for the debts of the partnership.

ART. 2813.—In no case, except as is hereinafter expressly provided, shall the partner, who has no other interest in the concern than that of partner *in commendam*, be liable to pay any sum beyond that which he has agreed to furnish by his contract. If it has been paid and lost in the business of the partnership, he is exonerated from any other payment. If any part be unpaid, he is liable for that amount, and no more, to the creditors of the partnership.

1 A. 120, 133.

ART. 2814.—The partner *in commendam* cannot be called upon by the partnership or its creditors to refund any dividend he may have received of net profits, fairly made during the solvency of the partners and *bona fide*, at a time stipulated in the articles of partnership.

ART. 2815.—The partner *in commendam* cannot bind the other partners by any act of his; he is not considered as a partner; further than is specially provided in this section.

7 R. 471.

ART. 2816.—Partnership *in commendam* must be made in writing, and must be recorded in the manner hereinafter directed, or otherwise the partner *in commendam* will be considered as a common partner in the concern, and will be subject to all the responsibilities towards third persons that would attach to any of the other partners, in the business for which he made his advance.

ART. 2817.—The contract must express the amount furnished, or agreed to be furnished, by the partner *in commendam*, the proportion of profits he is to receive, and of the expenses and losses he is to bear. It must state whether it has been received, and whether in goods, money, or how otherwise; and if not received, it must contain a stipulation to pay or deliver it. It must be signed by the parties in the presence of one or more witnesses, and shall be recorded in full by the officer authorized to record mortgages in the place where the principal business of the partnership is carried on. If it be a commercial partnership, and consists of several houses or establishments, in different parts of the State, such recording shall be made in each of such places.

ART. 2818.—The record mentioned in the preceding article shall be made in six days from the time of the execution of the contract, in the place where the principal establishment is situated, and if there are more than one, then allowing one day for every two leagues distance between such principal establishment and the others.

5 R. 172.

ART. 2819.—The officer, authorized to record mortgages, shall keep a separate book for the purpose of recording acts of partnership, which shall be, at all office hours, open for the inspection of any person who may choose to consult the same, and shall receive the same fees to which he is entitled for the recording of mortgages, and for certificates and copies. When the act is under private signature, the record shall be only made on the acknowledgment of the act, before a judge, a notary, or the person authorized to make the record, or by proof of the execution made in the same manner by one of the subscribing witnesses.

ART. 2820.—The business of the concern, to which the partner *in commendam* has contributed his advance, must not be carried on in the name of such partner, or in his name jointly with others, or by him or by his agency as agent, or attorney for the other partners, but by those to whom he has made the advance, and in their name or firm; and if the advance *in commendam* has been made to one person only, such person must carry on the business in his sole name, and must not make the addition "*and company*," or adopt any firm that may cause it to be understood that he has any partners. And if the partner *in commendam* shall take any part in the business of the partnership, or permit his name to be used in the firm, or knowingly permit any single person, to whom he has made the advance, to add any words to his name or firm, that may imply that he has other partners, besides the partner *in commendam*, when in fact he has none, such partner *in commendam* shall be liable to all the responsibilities of a general partner in the business for which he has made the advance.

5 L. 403, 408.

ART. 2821.—If the person, to whom the partner *in commendaam* has made the advance, shall, without his consent, use his name in the firm, or if, not having any other partner, he shall adopt or use any such

addition as is expressed in the last preceding article, the partner *in commendam* may immediately withdraw the sum he has advanced, and, on giving notice in two of the public newspapers, shall be freed from all responsibility, either to the partners or to third persons, from the time of such notice.

2 R. 513.

ART. 2822.—The partner *in commendam* cannot withdraw the stock he has furnished at a time when those, to whom he has advanced it, are in failing circumstances, or when there is a reasonable apprehension that they will become insolvent.

SECTION V.—*Of Commercial Partnerships.*

ART. 2823.—The particular rules, by which commercial partnerships are governed, will be found in the Commercial Code. All the provisions of this title, not repugnant to those contained in that code, are also applicable to commercial partnerships.

CHAPTER III.

OF THE OBLIGATIONS OF PARTNERS TOWARDS EACH OTHER, AND TOWARDS THIRD PERSONS.

SECTION I.—*Of the Obligations of Partners towards each other.*

ART. 2824.—When a partnership is made without specifying any time for its commencement, it begins at the time the contract is made.

ART. 2825.—If there has been no agreement respecting the time the partnership is to last, it is supposed to have been entered into for the whole time of the life of the partners, under the modifications mentioned in article 2855; or if the partnership be entered into for some affair the duration of which is limited, for the whole time such affair is to last.

ART. 2826.—The contract of partnership may depend upon conditions.

ART. 2827.—Every partner owes to the partnership all that he has promised to bring into the same.

When this proportion consists of a certain thing, and the partnership is evicted from the same, such partner is accountable for it towards the partnership, in the same manner as a seller is answerable to the purchaser who buys from him.

ART. 2828.—The partner, who promised to bring into the partnership a certain thing, is bound, in case of eviction of it, in the same manner as a seller towards the purchaser who buys from him.

ART. 2829.—The partner, who promised to put a sum of money into the partnership, owes the interest of the same from the day when he was bound to pay such sum.

In the same manner he owes the interest on such sums as he may have taken out of the funds of the partnership, from the day he has received them.

6 L. 762; 2 A. 87; 6 A. 170.

ART. 2830.—Any partner, who has bound himself to bring into the partnership his skill, industry, or credit, owes the partnership all the profits which he has made by the exercise of such skill, industry, or credit, or of such proportion thereof as he was bound to furnish.

ART. 2831.—When one of the partners is, for his own particular account, creditor of a person, who is at the same time indebted unto the partnership for a debt of the same nature, which is due likewise, the partner is bound to apply what he receives from the debtor to the discharge of what is due to the partnership and to him, in the proportion of both debts, although by his receipt he should have applied the whole sum paid to what is due to him in particular.

ART. 2832.—When one of the partners has received his full share of what is due to the partnership, if the debtor has become insolvent since, the partner, who has received his full share, is bound to return the same to the partnership, although he should have given a receipt for his own share.

ART. 2833.—Every partner is answerable to the partnership for the damages which it may have suffered by his fault, without being able to compensate such damages by the profits which his industry, skill, or credit may have produced in the business of the partnership; provided that no partner shall be held liable for any loss which has happened in consequence of any thing *bona fide* done or omitted by him in the legal exercise of his power, either as administrator or partner, although such act or omission should be injudicious and injurious to the partnership.

2 L. 268.

ART. 2834.—If the use only of certain specified property has been brought into partnership, and that property is of such a nature that it may be used and enjoyed without destroying it, the ownership remains in the partner who brought it in, and it is at his risk. But if such property be destroyed, or grow worse by keeping, or by the use that is made of it, if it was brought into partnership with the intent that it should be sold, or if it was taken at an estimated value, ascertained by an inventory or some other writing, in either of these cases, although the use only was contributed, the property is at the risk of the partnership; and in case of loss or injury, the partner who brought it in is a creditor of the partnership, to the amount of the credit or loss; provided that all the provisions of this article may be controlled by the covenants of the parties.

6 A. 195; See 13 L. 414.

ART. 2835.—A partner may be a creditor of the partnership, not only for the sums which he has disbursed, but likewise for the obligations he has entered into *bona fide* for the partnership, and for losses reasonably incurred in the administration.

ART. 2836.—When the contract of partnership does not determine the share of each partner in the profits or losses, each one shall be entitled to an equal share of the profits, and must contribute equally to the losses.

4 A. 330; See 11 R. 349.

ART. 2837.—If the partners have agreed to refer to one of them, or to a third person, for the regulation of the shares, this regulation cannot be annulled, unless it be by certain proofs that it is contrary to equity.

ART. 2838.—The partner intrusted with the administration of the affairs of the partnership by a special power given in writing, either by the articles of partnership or otherwise, may, without the assent of the other partners, and contrary to their prohibition, do any act which they have authorized him to do by such power, provided it be without fraud, and, in his opinion, for the advantage of the society.

This power, if contained in the articles of co-partnership, cannot be revoked without a lawful cause, as long as the partnership lasts. But if the power of administering be given subsequent to the articles of partnership, it is a simple mandate, and may be revoked.

ART. 2839.—When several partners are intrusted with the administration, without their duties being pointed out, or when it is not expressed that one shall not be able to act without the other, they may do separately all the acts relating to such administration.

ART. 2840.—If it has been stipulated that one of the administrators shall not do any thing without the other, one alone cannot act, even when the other is prevented by sickness or otherwise from taking a part in the acts which relate to the administration, until there be a new agreement between the partners.

ART. 2841.—When there is no agreement respecting administration in the act of partnership, the following rules are adhered to :

1. The partners are supposed to have given reciprocally to each other, the power of administering one for the other. What one does, is valid, even for the share of his partners, without receiving their approbation, saving the right which they, or every one of the partners has to oppose the operation, before it be concluded ;

2. Every partner may make use of the things belonging to the partnership, provided he employs the same to the uses for which they are intended, and he does not use them in such a manner as to prevent his partners from using them according to their rights, or against the interest of the partnership ;

3 A. 319, 323.

3. Every partner has a right to bind his partners to contribute with him to the expenses which are necessary for the preservation of the things of the partnership ;

4. A partner can neither dispose of nor make any change in any real property belonging to the partnership, without the consent of his partners, should even this disposition or change be advantageous to the partnership ;

4 L. 306.

5. In other than commercial partnerships a partner cannot, as partner only, and if he has not the administration, alienate or engage the things, which belong to the partnership.

4 L. 306.

ART. 2842.—Every partner may, without the consent of his partners, enter into a partnership with a third person, for the share which he has in the partnership, but he cannot, without the consent of his partners, make him a partner in the original partnership, should he even have the administration of it.

He is responsible for the damages occasioned by this third person to the partnership, in the same manner as he answers for those he has occasioned himself, according to article 2833.

SECTION II.—*Of the Obligations of Partners towards third Persons.*

ART. 2843.—Ordinary partners are not bound *in solido* for the debts of the partnership, and no one of them can bind his partners, unless they have given him power so to do, either specially, or by the articles of partnership.

15 L. 427; 16 L. 69, 223; 1 R. 62; 6 R. 70, 351; 12 R. 243; See 11 M. 331; 13 L. 197.

ART. 2844.—In the ordinary partnership, each partner is bound for his share of the partnership debt, calculating such share in proportion to the number of the partners, without any attention to the proportion of the stock or profits each is entitled to.

15 L. 133, 428; 16 L. 71; 6 R. 216; 12 R. 243; 2 A. 623; See 2796; See 11 M. 331.

ART. 2845.—If a debt be contracted by one of the partners of an ordinary partnership, who is not authorized, either in his own name or that of the partnership, the other partners will be bound, each for his share, provided it be proved that the partnership was benefited by the transaction.

2 L. 268; 13 L. 193; 1 R. 62.

ART. 2846.—All engagements made relative to the partnership affairs, by the person appointed to administer the business of an ordinary partnership by articles of partnership duly recorded, and pursuant to those powers, shall bind all the partners.

4 L. 305, 308.

CHAPTER IV.

OF THE DIFFERENT MANNERS IN WHICH PARTNERSHIPS END.

ART. 2847.—A partnership ends:

1. By the expiration of the time for which such partnership was entered into;
2. By the extinction of the thing, or the consummation of the negotiation;

13 L. 505.

3. By the death of one of the partners, or by his interdiction;
4. By his bankruptcy;
5. By the will of all the parties, legally expressed, or by the will of any one of them, founded on a legal cause, and expressed in the manner directed by law.

ART. 2848.—When a partnership has been entered into for a limited time, it ends of course at the expiration of that time.

ART. 2849.—The prorogation, which may be agreed upon between the parties, shall be made and proved in the same manner as the contract of partnership itself.

ART. 2850.—If a partnership has been entered into, the stock of which is to be formed with the proceeds of a sale, to be made in common, of several things belonging to each partner, and if it happen that the thing belonging to one of them is destroyed, the partnership shall be extinguished.

ART. 2851.—Every partnership ends of right by the death of one of the partners, unless an agreement has been made to the contrary.

12 R. 243.

ART. 2852.—The death of one partner dissolves the partnership between the surviving partners, unless there be a contrary stipulation.

3 R. 44; 12 R. 243; 3 A. 642.

ART. 2853.—If it has been stipulated that, in case of the death of one of the partners, the partnership should continue between the heir of the deceased and the surviving partners, or between the surviving partners only, either of these stipulations shall be observed.

But if the stipulation be, that the partnership shall continue between the survivors only, the heir of the deceased shall be entitled to a division of the partnership property, as it stood at the day of the death of his ancestor, and to a share in the profits of any partnership operation in which his share of the stock was employed, and which was unfinished at that time.

ART. 2854.—The interdiction of one of the partners, or his bankruptcy, has, as to the dissolution of the partnership, the same effect as the death of one of the partners.

ART. 2855.—If the partnership has been contracted without any limitation of time, one of the partners may dissolve the partnership by notifying to his partners that he does not intend to remain any longer in the partnership, provided, nevertheless, the renunciation to the partnership be made *bona fide*, and it does not take place unseasonably.

ART. 2856.—The renunciation is not *bona fide*, when the partner renounces for the purpose of appropriating to himself the profits which the partners expected to receive from the partnership.

ART. 2857.—The renunciation is made unseasonably, if it be made at the time when things are no longer entire, and when the interest of the partnership requires that its dissolution be postponed. The common interest of the partnership is considered, and not the interest of the partner who opposes the renunciation.

ART. 2858.—Although the partnership may have been entered into for a limited time, one of the partners may, provided he has a just cause for the same, dissolve the partnership before the time, even although inconveniences might result to the partners, and although it might have been stipulated that the partners could not desist from the partnership before the stipulated time.

18 L. 341, 345.

ART. 2859.—There is just cause for a partner to dissolve the partnership before the appointed time, when one or more of the partners fail in their obligations, or when an habitual infirmity prevents him from devoting himself to the affairs of the partnership, which require his presence or his personal attendance.

ART. 2860.—The renunciation of the partnership by one of the partners does not operate the dissolution of the partnership, unless it be notified to all the other partners.

ART. 2861.—The rules concerning the partition of inheritances, the manner of making such partition, and the obligations which result from the same between heirs, apply to partners.

13 L. 279; 2 A. 87.

TITLE XII.

OF LOAN.

ART. 2862.—There are two kinds of loans :

The loan of things, which may be used without being destroyed ;

And the loan of things, which are destroyed by being used.

The first kind is called loan for use or *commodatum* ;

The second kind is called loan for consumption, or *mutuum*.

ART. 2863.—This second kind is still subdivided into gratuitous loan, and loan on interest.

CHAPTER I.

OF THE LOAN FOR USE, OR *COMMODATUM*.SECTION I.—*Of the Nature of the Loan for Use.*

ART. 2864.—The loan for use is an agreement, by which a person delivers a thing to another, to use it according to its natural destination, or according to the agreement, under the obligation, on the part of the borrower, to return it after he shall have done using it.

ART. 2865.—This loan is essentially gratuitous ; otherwise it would be a letting or hiring.

ART. 2866.—The lender remains proprietor of the thing lent.

ART. 2867.—Every thing which is in commerce, and which is not consumed by use, may be the object of this agreement.

ART. 2868.—The obligations entered into by the loan for use, are binding upon the heirs of the lender and of the borrower.

But if the loan has only been made on account of the borrower, and to him personally, then his heirs cannot continue to possess the thing lent.

SECTION II.—*Of the Engagements of the Borrower for Use.*

ART. 2869.—The borrower is bound to keep and preserve, in the best possible order, the thing lent. He can use it only in the manner for which it is fitted by its nature, or which is allowed by the agreement, under the penalty of damages.

ART. 2870.—If the borrower employs the thing to another use, or for a longer time than has been agreed on, he shall be liable for the loss which may happen, although the same might have happened by chance.

ART. 2871.—If the thing lent be destroyed by a chance which might have been prevented by the borrower in making use of his own ; or if, unable to preserve both, he has preferred preserving his own, he is answerable for the loss of the other.

ART. 2872.—If the thing has been valued at the time of lending it,

the loss which results, even by chance, is on account of the borrower, unless there has been a contrary agreement.

ART. 2873.—If the thing be made worse by the effects of the use alone for which it was borrowed, and without any fault on the part of the borrower, he is not answerable for the same.

ART. 2874.—The borrower is not at liberty to keep the thing as a compensation for what the lender owes him.

ART. 2875.—If, in order to use the thing, the borrower be compelled to go to some expense, he has no right to be reimbursed by the lender.

ART. 2876.—If several persons have jointly borrowed the same object, they are bound for it *in solido* to the lender.

SECTION III.—*Of the Obligations of the Lender for Use.*

ART. 2877.—The lender cannot take back the thing lent, but after the time agreed on; or, if no agreement has been entered into in that respect, after it has been employed to the use for which it was borrowed.

ART. 2878.—Nevertheless, if, during the interval, or before the borrower has done with the thing, the lender be in an urgent and unforeseen need of this thing, the judge may, according to circumstances, compel the borrower to return it to him.

ART. 2879.—If, during the loan, the borrower was obliged for the preservation of the thing to go to some extraordinary expense necessary, and so urgent that he could not give notice of the same to the lender, the lender shall be bound to reimburse him for the same.

ART. 2880.—When the thing lent has defects of such a nature that it may occasion injury to the person who uses it, the lender is answerable for the consequences, if he knew the defects, and did not apprise the borrower of them.

CHAPTER II.

OF THE LOAN FOR CONSUMPTION, OR MUTUUM.

SECTION I.—*Of the Nature of the Loan for Consumption.*

ART. 2881.—The loan for consumption is an agreement by which one person delivers to another, a certain quantity of things which are consumed by the use, under the obligation, by the borrower, to return to him as much of the same kind and quality.

ART. 2882.—By the effect of this loan the borrower becomes the owner of the thing lent, and if it be destroyed, in whatever manner the same may have happened, the loss is on his account.

ART. 2883.—Any thing which is such, that it may be returned of the same kind and quality, may be given as a loan for consumption; but things which, although of the same kind, still may differ from each other in quality, as beasts and the like, cannot be lent after this manner.

ART. 2884.—The obligation which results from a loan of money, can never be more than the numerical sum mentioned in the contract.

If there has been augmentation or diminution in the value of the specie before the time of the payment, the debtor is bound to return nothing more than the numerical sum which was lent to him, in such specie as has currency at the time of the payment.

ART. 2885.—The rule in the preceding article does not obtain, if the loan has been made in bullion.

ART. 2886.—If provisions have been lent, whatever be the increase or diminution of their price, the debtor is still bound to return the same quantity and quality, and he is bound to return no more.

SECTION II.—*Of the Obligations of the Lender for Consumption.*

ART. 2887.—In the loan for consumption, the lender is subject to the responsibility above established with respect to the vices of the thing lent for use.

ART. 2888.—The lender cannot claim the thing lent before the time agreed on.

If no term has been agreed on for the restitution, the judge may grant a delay according to circumstances.

ART. 2889.—No delay shall be granted, if the loan has been stipulated as exigible at will.

ART. 2890.—If it was agreed only that the borrower should pay when he could, or when he should have the means so to do, he ought to be sentenced to pay, as soon as he appears to be able so to do.

SECTION III.—*Of the Engagements of the Borrower for Consumption.*

ART. 2891.—The borrower is obliged to restore the thing lent in the same quantity and condition, and at the place and time agreed on.

If no spot has been fixed on for the restitution, it must be made at the place where the loan was made.

ART. 2892.—If it be impossible for him to fulfil his engagement, he is bound to pay the value of the things lent, taking into consideration the time and place when they ought to have been returned, according to the agreement.

If the time and place have not been regulated, the payment is made according to the price which the thing is worth at the time and place where the demand is made.

4 R. 346.

ART. 2893.—If the borrower does not return the things lent, or their value at the time appointed, he shall be bound to pay interest from the time that a judicial demand of it has been made.

6 L. 762; 4 R. 846.

CHAPTER III.

OF LOAN AND INTEREST.

ART. 2894.—It is lawful to stipulate interest for a simple loan, whether of money or other movable things.

6 L. 762.

ART. 2895.—Interest is either legal or conventional.

19 L. 461.

Legal interest is fixed at the following rates, to wit :

At five per cent. on all sums which are the object of a judicial demand, whence this is called judicial interest ;

2 R. 163, 171 ; 3 A. 157, 697 ; See 2 L. 62 ; 10 R. 174.

And on sums discounted by banks, at the rate established by their charters.

2 L. 60 ; 10 R. 174.

The amount of the conventional interest cannot exceed ten per cent. The same must be fixed in writing ; and testimonial proof of it is not admitted in any case.

7 L. 520 ; 13 L. 101 ; 1 A. 265 ; See 12 M. 21 ; 7 L. 105 ; 3 R. 251 ; S.R. 438 ; 10 R. 118 ; 2 A. 876 ; 5 A. 508 ; See also 6 R. 216 ; 4 A. 78 ; 9 R. 194 ; 12 R. 173, See 1925.

Stat. 19th February, 1844, p. 15.—§ 1. That article two thousand eight hundred and ninety-five of the Civil Code of Louisiana, be so amended that the amount of conventional interest shall in no case exceed eight per cent., under pain of forfeiture of the entire interest so contracted.

§ 2. If any person hereafter shall pay on any contract entered into after the passage of this act, a higher rate of interest than the above, as discount or otherwise, the same may be sued for and recovered within twelve months from the time of such payment.

ART. 2896.—The release of the principal, without any reserve as to interest, raises the presumption that it also has been paid, and operates a release of it.

TITLE XIII.

OF DEPOSIT AND SEQUESTRATION.

CHAPTER I.

OF DEPOSIT IN GENERAL, AND OF ITS DIVERS KINDS.

ART. 2897.—A deposit, in general, is an act by which a person receives the property of another, binding himself to preserve it and return it in kind.

1 R. 21.

ART. 2898.—There are two species of deposit :
That properly so called, and sequestration.

See 2934.

CHAPTER II.

OF THE DEPOSIT PROPERLY SO CALLED.

SECTION I.—*Of the Nature and Essence of the Contract of Deposit.*

ART. 2899.—The object of a deposit must be properly some movable thing, but slaves also may be deposited.

6 A. 362.

ART. 2900.—It is essentially gratuitous. If the person, with whom the deposit is made, receive a compensation, it is no longer a deposit, but a hiring.

ART. 2901.—The deposit is perfected only by the delivery, real or fictitious, of the thing deposited.

The fictitious delivery is sufficient, when the depositary is already possessed, in some other right, of the thing agreed to be left in deposit with him.

ART. 2902.—The deposit is voluntary or necessary.

SECTION II.—*Of Voluntary Deposit.*

ART. 2903.—The voluntary deposit takes place by the mutual consent of the person making the deposit and the person receiving it.

ART. 2904.—The voluntary deposit can only be regularly made by the owner of the thing deposited, or with his consent, expressed or implied.

Consent is implied, when the owner has carried or sent the thing to the depositary, and the latter, knowing that the thing had been sent, has not refused to receive it.

ART. 2905.—The owner, without whose knowledge the deposit has been made, may reclaim his property in the hands of the depositary, who

cannot refuse to deliver it, but must call in the person who made the deposit, that he may oppose the restitution.

ART. 2906.—The voluntary deposit can only take place between persons capable of contracting.

Nevertheless, if a person capable of contracting accept a deposit from a person who is incapable, he incurs all the obligations of a real depositary, and may be sued by the tutor or curator of the person who has made the deposit.

ART. 2907.—If the deposit was made by a person capable of contracting, to another person not having that capacity, he who has made the deposit has only an action of claim for the thing, as long as it remains in the hands of the depositary, or an action of restitution for the amount of the benefit the depositary has derived from it.

SECTION III.—*Of the Obligations of the Depositary.*

ART 2908.—The depositary is bound to use the same diligence in preserving the deposit, that he uses in preserving his own property.

17 L. 582; See 17 L. 570.

ART. 2909.—The provision in the preceding article is to be rigorously enforced :

1. Where the deposit has been made by the request of the depositary ;

2. If it has been agreed that he shall have a reward for preserving the deposit ;

3. If the deposit was made solely for his advantage ;

4. If it has been expressly agreed that the depositary should be answerable for all neglects.

ART. 2910.—The depositary is not answerable, in any case, for accidents produced by overpowering force, unless he has delayed improperly to restore the deposit.

ART. 2911.—The depositary cannot make use of the thing deposited without the express or implied permission of the depositor.

ART. 2912.—If the thing be of the nature of those which are consumed by use, and the depositor has given permission to the depositary to use them, the contract is no longer a deposit, but a loan for consumption, and becomes subject to the rules which govern that contract.

ART. 2913.—If the things deposited be slaves or animals, the depositary may employ them for the benefit of the depositor, unless the latter has directed otherwise.

ART. 2914.—The depositary should not seek to know what are the things confided to him, if they were shut up in a box, or in a sealed cover.

ART. 2915.—The depositary ought to restore the precise object which he received.

Thus a deposit of coined money must be restored in the same specie in which it was made, whether it has sustained an increase or diminution of value.

17 L. 581; 1 R. 21.

ART. 2916.—The depositary is only bound to restore the thing in

the state in which it is at the moment of restitution. Deteriorations not effected by any act of his, are to the loss of the depositor.

ART. 2917.—A depositary, from whom the thing deposited has been taken away by force, and who has received a price, or any thing in its stead, must restore what he has received in exchange.

ART. 2918.—The heirs of a depositary, who has sold *bona fide* a thing, which he knew not to be a deposit, is bound only to restore the price which he has received, or to make over his claim against the purchaser, if the price be not paid.

ART. 2919.—If the thing deposited has been productive, and the proceeds have been received by the depositary, he is bound to restore them. He owes no interest for the money deposited in his hands, except from the day on which he became a defaulter, by delaying to restore it.

6 L. 762.

ART. 2920.—The depositary must restore the thing deposited only to him who delivered it, or in whose name the deposit was made, or who was pointed out to receive it.

ART. 2921.—He cannot require him who made the deposit, to prove that he was the owner of the thing. Yet if he discovers that the thing was stolen, and who the owner of it is, he must give him notice of the deposit, requiring him to claim within due time. If the owner, having received due notice, neglects to claim the deposit, the depositary is fully exonerated on returning it to the person from whom he received it.

ART. 2922.—If the person who made the deposit be deceased, the thing deposited can be restored properly to his heir; if there be several heirs, it must be delivered to each of them for his respective part and portion, unless the thing deposited be indivisible, in which case they must agree among themselves.

If the depositor has changed condition, as if a woman marries, or a person of full age falls under interdiction, the deposit can be restored only to the person who has the administration of the rights and property of the depositor.

ART. 2923.—If the deposit has been made by a tutor, a husband, or by any other administrator, it can be restored, after the function of that administrator has ceased, only to him whom he represented.

1 R. 21.

ART. 2924.—When the contract specifies a place where the deposit is to be restored, it must be delivered at that place, but the expense of conveyance to the place of delivery must be borne by the depositor.

ART. 2925.—If the contract does not specify the place where the deposit must be restored, it shall be restored at the place where such deposit has been made.

ART. 2926.—The deposit must be restored to the depositor as soon as he demands it, even though the contract may have specified the time for its being restored, unless there be, in the hands of the depositary, an attachment on the property, or an opposition made on the owner.

6 L. 32; 2 A. 558, 556.

ART. 2927.—The depositary cannot withhold the thing deposited on pretence of a debt due to him from the depositor on any account distinct from the deposit, or by way of off-set.

But he may retain the deposit until his advances are repaid, as well as any other claims which he may have, arising from the deposit.

2 A. 24; 6 A. 46.

ART. 2928.—When several persons have received the same object in deposit, each of them is bound to restore the whole.

ART. 2929.—The unfaithful depositary is not admitted to the benefit of a surrender.

ART. 2930.—All the obligations of the depositary cease on his discovering and proving that he himself is the owner of the thing deposited.

SECTION IV.—*Of the Obligations and Rights of him by whom the Deposit has been made.*

ART. 2931.—He who has made a deposit is bound to reimburse the depositary the money he has advanced for the safe keeping of the thing, and to indemnify him for all that the deposit has cost him.

He is to indemnify the depositary for the losses which the thing deposited may have occasioned him.

ART. 2932.—The depositor has a right to reclaim the thing deposited, when it exists in kind in the hands of the depositary or his assigns.

ART. 2933.—If the depositary or his assigns have disposed of the thing, and the price remains due, the depositor has a right to it in preference to any other creditor of the depositary.

1 R. 21.

ART. 2934.—The distinction formerly established by law between the perfect and the imperfect deposit, is abolished.

The only real deposit is that, where the depositary receives a thing to be preserved in kind, without the power of using it, and on the condition that he is to restore the identical object.

2 A. 24; See 289S.

CHAPTER III.

OF THE NECESSARY DEPOSIT.

ART. 2935.—The necessary deposit is that which has been compelled by some accident, such as fire, falling down of a house, pillage, shipwreck, or other casualty.

The deposition on oath, or affirmation of a single competent or credible witness, may be sufficient to prove a necessary deposit, even when the amount of the thing deposited exceeds five hundred dollars.

ART. 2936.—An innkeeper is responsible as depositary, for the effects brought by travellers who lodge at his house; the deposit of such effects is considered as a necessary deposit.

ART. 2937.—An innkeeper is responsible for the effects brought by travellers, even though they were not delivered into his personal care, provided however, they were delivered to a servant or person in his employment.

ART. 2938.—He is responsible, if any of the effects be stolen or damaged, either by his servants or agents, or by strangers going and coming in the inn.

1 R. 410.

ART. 2939.—He is not responsible for what is stolen by force and arms, or with exterior breaking open of doors, or by any other extraordinary violence.

1 R. 410.

ART. 2940.—The deposition on oath or affirmation of a single competent and credible witness as to the deposit at inns, may be admitted as a good proof, even when the value of the thing so deposited exceeds five hundred dollars; but the judge must admit this kind of proof, in that case, with circumspection, according to the circumstances of the fact, and the condition of the parties.

CHAPTER IV.

OF SEQUESTRATION.

SECTION I.—*Of its different Species.*

ART. 2941.—Sequestration is either conventional or ordered by the judge.

SECTION II.—*Of the Conventional Sequestration.*

ART. 2942.—Sequestration is a kind of deposit, which two or more persons, engaged in litigation about any thing, make of the thing in contest to an indifferent person, who binds himself to restore it, when the issue is decided, to the party to whom it is adjudged to belong.

The depositary in this case is called the sequestrator.

1 A. 222; 2 A. 666; See 1 M. 79; 6 N. S. 473; 6 L. 542; 19 L. 91; 2 R. 150.

ART. 2943.—A sequestration may be not gratuitous, and then it is rather a contract of hiring than of deposit.

ART. 2944.—When it is gratuitous, it is a real contract of deposit, subject to all the rules which apply to that contract, save the differences hereafter explained.

ART. 2945.—A sequestration has this difference from a deposit, that it may have for its object, not only movables and slaves, but also real property.

ART. 2946.—The depositary, under this title, is not to restore the thing deposited, till after the decision of the suit, and then he must restore it to the party to whom it is adjudged.

17 L. 24, 531.

ART. 2947.—He cannot even till then exonerate himself from the care of the thing sequestered in his hands; unless for some cause rendering it indispensable that he resign his trust.

In that case he can deliver up the thing only to a person agreed upon by the parties concerned; and in case they do not agree, he must cite them to have a new sequestrator appointed.

SECTION III.—*Of the Judicial Sequestration or Deposit.*

ART. 2948.—The judicial deposit is that which is made in consequence of an order or judgment rendered by a judge in the cases provided for the laws regulating judicial proceedings.

1 A. 222; 2 A. 666.

ART. 2949.—The appointment of a judicial guardian produces, between the person seizing and the guardian, reciprocal obligations. The guardian must use, for the preservation of the effects seized, the care of a prudent father of a family; he must produce them either for the discharge of the person who has seized them for sale, or to the person against whom the execution was levied, in case the seizure be raised.

The obligation of the party that has seized the property, consists in paying the guardian his legal fees.

17 L. 24, 578, 582; 7 R. 82; 10 R. 147.

ART. 2950.—The judicial sequestration is confided to the public officer whom the law provides to execute the orders of the judge.

This officer is subject to all the obligations imposed in the case of conventional sequestration.

17 L. 24.

TITLE XIV.

OF ALEATORY CONTRACTS.

ART. 2951.—The aleatory contract is a mutual agreement, of which the effects, with respect both to the advantages and losses, whether to all the parties or to one or more of them, depend on an uncertain event.

ART. 2952.—The law grants no action for the payment of what has been won at gaming or by a bet, except for games tending to promote skill in the use of arms, such as the exercise of gun, foot, horse, and chariot racing.

And as to such games, the judge may reject the demand, when the sum appears to him excessive.

ART. 2953.—In all cases in which the law refuses an action to the winner, it also refuses to suffer the loser to reclaim what he has voluntarily paid, unless there have been, on the part of the winner, fraud, deceit, or swindling.

See 4 N. S. 84; 1 A. 176.

TITLE XV.

OF MANDATE.

CHAPTER I.

OF THE NATURE AND FORM OF MANDATES.

ART. 2954.—A procuration or letter of attorney is an act by which one person gives power to another to transact for him and in his name, one or several affairs.

ART. 2955.—The mandate may take place in five different manners: for the interest of the person granting it alone; for the joint interest of both parties; for the interest of a third person; for the interest of such third person and that of the party granting it; and finally, for the interest of the mandatary and a third person.

ART. 2956.—The object of the mandate must be lawful, and the power conferred must be one which the principal himself has a right to exercise.

ART. 2957.—The contract of mandate is completed only by the acceptance of the mandatary.

ART. 2958.—A power of attorney may be accepted expressly in the act itself, or by a posterior act.

19 L. 225.

It may also be accepted tacitly; and this tacit acceptance is inferred, either from the mandatary acting under it, or from his keeping silence when the act containing his appointment, is transmitted to him.

11 L. 288, 294.

ART. 2959.—If the proxy or attorney in fact pleads that he has not accepted or acted under the power, it is incumbent on the principal to prove he has.

ART. 2960.—The procuration is gratuitous unless there have been a contrary agreement.

10 L. 503.

ART. 2961.—A power of attorney may be given, either by a public act or by a writing under private signature, even by letter.

It may also be given verbally, but of this testimonial proof is admitted only conformably to the title of *conventional obligations*.

4 L. 169; See 2 L. 596; 8 R. 236; 1 A. 72.

ART. 2962.—A blank may be left for the name of the attorney in fact in the letter of attorney.

In that case, the bearer of it is deemed the person empowered.

ART. 2963.—It may be either general for all affairs, or special for one affair alone.

ART. 2964.—It may vest an indefinite power to do whatever may appear conducive to the interest of the principal, or it may restrict the power given to the doing of what is specified in the procuration.

ART. 2965.—A mandate, conceived in general terms, confers only a power of administration.

10 M. 679; 10 R. 43; 12 R. 653.

If it be necessary to alienate or give a mortgage, or do any other act of ownership, the power must be express.

Stat. 18th April, 1853, No. 126, p. 89.—It shall be lawful for any married woman having a mortgage or privilege on the property of her husband, to appoint one or more agents with power in her behalf, during her temporary or permanent absence from the State, to intervene in any contract of mortgage or sale, made by the husband, and sign in her behalf such renunciation of said mortgage or privilege, as the wife herself might do, if personally present, and the said power may be either general or special, and may be executed in the United States, before any judge or justice of the peace, or notary, or commissioner of this State, and in foreign countries before any consul, vice consul, or consular or commercial agent of the United States.

6 R. 142; 2 A. 890; 4 A. 229.

ART. 2966.—Thus the power must be express and special for the following purposes:

To sell or to buy;

10 M. 679; 7 N. S. 244; 1 R. 303; 1 A. 72; 4 A. 229; 6 A. 528; See 2 L. 596; 6 L. 591; 8 R. 236, See 2415.

To encumber or hypothecate;

10 R. 43, 61.

To accept or reject a succession;

To contract a loan or acknowledge a debt.

3 L. 199; 4 L. 310; 9 R. 293; 12 R. 221, 653.

To draw or indorse bills of exchange or promissory notes;

1 R. 303; 6 R. 13; 1 A. 457; 2 A. 358, 294, 772, See 1 N. S. 608; 6 L. 590.

To compromise or refer a matter to arbitration;

2 N. S. 292; 16 L. 51, 54; 2 R. 1.

To make a transaction in matters of litigation; and in general where things to be done are not merely acts of administration, or such as facilitate such acts;

8 L. 569; 13 L. 484; 17 L. 45; 2 A. 890; See 4 L. 32; 18 L. 332; 2 R. 513; 5 R. 172; 6 R. 70, 127, 255; 8 R. 236; 12 R. 221, 243; 11 R. 95, 497; 2 A. 772; 5 A. 700.

ART. 2967.—A power to compromise on a matter in litigation does not include that of submitting or referring to arbitrators.

5 N. S. 669.

ART. 2968.—A power to receive includes that of giving a receipt in acquittance.

ART. 2969.—Powers granted to persons who exercise a profession, or fulfil certain functions, of doing any business in the ordinary course of affairs to which they are devoted, need not be specified, but are inferred from the functions which these mandataries exercise.

ART. 2970.—Women and emancipated minors may be appointed attorneys; but, in the case of a minor, the person appointing him has no action against him, except according to the general rules relative to the obligations of minors; and in the case of a married woman, who has accepted the power without authority from her husband, she can only be sued in the manner specified under the title of *marriage contract* and the respective rights of married persons.

CHAPTER II.

OF THE OBLIGATIONS OF A PERSON ACTING UNDER A POWER OF ATTORNEY.

ART. 2971.—The attorney in fact is bound to discharge the functions of the procuration, as long as he continues to hold it, and is responsible to his principal for the damages that may result from the non-performance of his duty.

He is bound even to complete a thing which had been commenced at the time of the principal's death, if any danger result from delay.

9 R. 396; 10 R. 481; 11 R. 81; 12 R. 423; See 2972.

ART. 2972.—The attorney is responsible, not only for unfaithfulness in his management, but also for his fault or neglect.

Nevertheless, the responsibility with respect to faults, is enforced less rigorously against the mandatary acting gratuitously, than against him who receives a reward.

7 M. 464; 1 N. S. 367; 4 L. 23; 17 L. 417; 11 R. 81; 12 R. 423; See 9 R. 396.

ART. 2973.—He is obliged to render an account of his management, unless this obligation has been expressly dispensed with in his favor.

10 R. 481; 11 R. 81.

ART. 2974.—He is bound to restore to his principal whatever he has received by virtue of his procuration, even should he have received it unduly.

10 R. 481; 4 A. 414.

ART. 2975.—In case of an indefinite power, the attorney cannot be sued for what he has done with good intention.

The judge must have regard to the nature of the affair, and the difficulty of communication between the principal and the attorney.

16 L. 61; See 3 A. 463.

ART. 2976.—The attorney is answerable for the person substituted by him to manage in his stead, if the procuration did not empower him to substitute.

ART. 2977.—He is also answerable for his substitute, if, having the power to appoint one, and the person to be appointed not being named in the procuration, he has appointed for his substitute a person notoriously incapable, or of suspicious character.

ART. 2978.—Even where the attorney is answerable for his substitute, the principal may, if he thinks proper, act directly against the substitute.

See 7 L. 130.

ART. 2979.—The attorney cannot go beyond the limits of his procuration; whatever he does in exceeding his power is null and void with regard to the principal, unless ratified by the latter, and the attorney is alone bound by it in his individual capacity.

1 A. 72; 3 A. 463.

ART. 2980.—The mandatary is not considered to have exceeded his authority, when he has fulfilled the trust confided to him, in a manner more advantageous to the principal, than that expressed in his appointment.

7 L. 130; 1 A. 72.

ART. 2981.—The mandatary, who has communicated his authority to a person with whom he contracts in that capacity, is not answerable to the latter for any thing done beyond it, unless he has entered into a personal guarantee.

3 M. 642; 4 N. S. 303; 1 L. 198; 5 L. 334; 6 L. 762; 10 L. 390; 11 L. 13; 13 L. 21; 3 R. 373.

ART. 2982.—The mandatary is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without having exhibited his powers.

5 L. 333; See 2981.

ART. 2983.—When there are several attorneys in fact empowered by the same act, they are not responsible jointly and severally *in solido* to one another, for the acts of each, unless such responsibility be expressed in the procuration.

3 L. 596.

ART. 2984.—The attorney is answerable for the interest of any sum of money he has employed to his own use, from the time he has so employed it; and for that of any sum remaining in his hands, from the day he becomes a defaulter by delaying to pay it over.

8 R. 13; 2 A. 87, 281; 4 A. 414, 490; 6 A. 170; See 19 L. 436.

CHAPTER III.

OF THE MANDATARY OR AGENT OF BOTH PARTIES.

ART. 2985.—The broker or intermediary is he who is employed to negotiate a matter between two parties, and who, for that reason, is considered as the mandatary of both.

6 L. 417, 693.

ART. 2986.—The obligations of a broker are similar to those of an ordinary mandatary, with this difference, that his engagement is double, and requires that he should observe the same fidelity towards all parties, and not favor one more than another.

5 L. 325; 6 L. 407, 417.

ART. 2987.—Brokers are not responsible for events which arise in the affairs in which they are employed; they are only, as other agents, answerable for fraud or faults.

See 1 N. S. 219.

ART. 2988.—Brokers, except in case of fraud, are not answerable for the insolvency of those to whom they procure sales or loans although they receive a reward of their agency, and speak in favor of him who buys or borrows.

6 L. 417.

ART. 2989.—Commercial and money brokers, besides the obligations, which they incur in common with other agents, have their duties prescribed by the laws regulating commerce.

CHAPTER IV.

OF THE OBLIGATION OF THE PRINCIPAL WHO ACTS BY HIS ATTORNEY IN FACT

ART. 2990.—The principal is bound to execute the engagements contracted by the attorney, conformably to the power confided to him.

For any thing further he is not bound, except in so far as he has expressly ratified it.

6 A. 388.

ART. 2991.—The principal ought to reimburse the expenses and charges, which the agent has incurred in the execution of the mandate, and pay his commission where one has been stipulated.

If there be no fault imputable to the agent, the principal cannot dispense with this reimbursement and payment, even if the affair has not succeeded; nor can he reduce the amount of reimbursement, under pretence that the charges and expenses ought to have been less.

ART. 2992.—The mandatary has a right to retain, out of the property of the principal in his hands, a sufficient amount to satisfy his expenses and costs.

He may even retain, by way of off-set, what the principal owes him, provided the debt be liquidated.

3 A. 93.

ART. 2993.—The attorney must also be compensated for such losses as he has sustained on occasion of the management of his principal's affairs, when he cannot be reproached with imprudence.

ART. 2994.—If the attorney has advanced any sum of money for the affairs of the principal, the latter owes the interest of it, from the day on which the advance is proved to have been made.

6 L. 762; 2 A. 779, 874.

ART. 2995.—If the attorney has been empowered by several persons for an affair common to them, every one of these persons shall be bound jointly and severally *in solido* to him for all the effects of the procuration.

CHAPTER V.

HOW THE PROCURATION EXPIRES.

ART. 2996.—The procuration expires:

By the revocation of the attorney;

By the attorney's renunciation of the power;

By the change of condition of the principal;

By the death, seclusion, interdiction or failure of the agent or principal.

15 L. 443.

ART. 2997.—The principal may revoke his power of attorney whenever he thinks proper, and, if necessary, compel the agent to deliver up the written instrument containing it, if it be an act under private signature.

1 A. 401.

ART. 2998.—If the principal only notified his revocation to the attorney, and not to the persons with whom he has empowered the attorney to transact for him, such persons shall always have the right of action against the principal to compel him to execute or ratify what has been done by the attorney; the principal has, however, a right of action against the attorney.

1 A. 401.

ART. 2999.—The appointment of a new attorney to transact the same business produces the same effect as a revocation of the first, from the day such appointment is notified to the first attorney.

1 A. 401.

ART. 3000.—The attorney may renounce his power of attorney, by notifying to the principal his renunciation.

Nevertheless, if this renunciation be prejudicial to the principal, he ought to be indemnified by the agent, unless the latter should be so situated that he cannot continue the agency without considerable injury.

ART. 3001.—If the attorney, being ignorant of death, or of the cessation of the rights of his principal, should continue under his power of attorney, the transactions done by him, during this state of ignorance, are considered as valid.

ART. 3002.—In the cases above enumerated, the engagements of the agent are carried into effect in favor of third persons acting in good faith.

ART. 3003.—In case of the death of the attorney, his heir ought to inform the principal of it; and, in the mean time, attend to what may be requisite for the interest of the principal.

TITLE XVI.

OF SURETYSHIP.

CHAPTER I.

OF THE NATURE AND EXTENT OF SURETYSHIP.

ART. 3004.—Suretyship is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation, if the debtor does not.

5 N. S. 562; 14 L. 509; 12 F. 378; 1 A. 122.

ART. 3005.—Suretyship can only be given for the performance of valid contracts. A man may, however, become surety for an obligation of which the principal debtor might get a discharge by an exception merely personal to him, such as that of being a minor, or a married woman.

ART. 3006.—The suretyship cannot exceed what may be due by the debtor, nor be contracted under more onerous conditions.

It may be contracted for a part of the debt only, or under more favorable conditions.

The suretyship which exceeds the debt, or which is contracted under more onerous conditions shall not be void, but shall be reduced to the conditions of the principal obligation.

1 R. 449; 10 R. 412; 12 R. 571; 1 A. 254; 2 A. 160; 3 A. 294.

ART. 3007.—A man may be surety without the order or even the knowledge of the person for whom he becomes surety.

Surety may also be given, not only for the principal debtor, but also for the person who has been his security.

ART. 3008.—Suretyship cannot be presumed; it ought to be expressed, and is to be restrained within the limits intended by the contract.

8 M. 14; 3 L. 503; 3 R. 373; 5 R. 70; 12 R. 373; 1 A. 62; 3 A. 255, 577, 635; See 5 N. S. 562; 7 L. 103; 7 R. 13; 11 R. 330; 12 R. 227.

ART. 3009.—A general and indefinite suretyship extends to all the accessories of the principal debt, and even to the costs.

3 L. 373.

ART. 3010.—Surety does not operate a mortgage on the property, unless there has been an express agreement.

3 R. 342; 1 A. 62.

ART. 3011.—The debtor obliged to furnish security must offer a person able to contract, of property sufficient to answer for the amount of the obligation, and whose domicile is in the jurisdiction of the court where it is to be given.

1 N. S. 276; 12 L. 93; 14 L. 245; 17 L. 433; 2 R. 451; 3 R. 413; 1 A. 62; 3 A. 42; 6 A. 326.

ART. 3012.—When the security received by the creditor, either voluntarily or by the direction of law, becomes insolvent, his place should be supplied by another.

An exception to this rule takes place, only where by the agreement the creditor has required that a certain person shall be given as security.

3 A. 365.

ART. 3013.—The obligations of sureties descend to their heirs.

CHAPTER II.

OF THE EFFECTS OF SURETYSHIP.

SECTION I.—*Of the Effects of Suretyship between the Creditor and the Surety.*

ART. 3014.—The obligation of the surety towards the creditor, is to pay him in case the debtor should not himself satisfy the debt, and the property of such debtor is to be previously discussed or seized, unless the security should have renounced the plea of discussion, or should be bound *in solido* jointly with the debtor, in which case the effects of his engagement are to be regulated by the same principles which have been established for debtors *in solido*.

1 A. 254; 2 A. 330; 3 A. 365. See 2 M. 336; 5 M. 366; 11 M. 434; 1 N. S. 473; 3 R. 253.

ART. 3015.—The creditor is not bound to discuss the principal debtor's property, unless he should be required to do so by the security, on the institution of proceedings against the latter.

5 M. 366, 674; 6 M. 562, 9 M. 385; 12 M. 373; 1 N. S. 473; 14 L. 165; 1 R. 15; 5 A. 633.

ART. 3016.—The surety who does require the discussion, is bound to point out to the creditor the property of the principal debtor, and furnish a sufficient sum to have the discussion carried into effect.

He must not point out the property of the principal debtor situated out of the State, nor the property which is in litigation, nor that which is mortgaged for debt, and no longer in the possession of the debtor.

7 N. S. 195; 13 L. 274; 1 R. 15; 3 A. 674.

ART. 3017.—When the security has pointed out property in the manner directed in the foregoing article, and has furnished a sufficient sum to have the discussion effected, the creditor is, to the amount of property pointed out, responsible to the security for the insolvency of the principal debtor, provided it has occurred through remissness in commencing proceedings.

3 A. 674.

ART. 3018.—When several persons have become sureties for the same debt, each of them is individually liable for the whole of the debt in case of insolvency of any of them.

Any one of them may, however, demand that the creditor should divide his action, by reducing his demand to the amount of the share and portion due by each surety, unless the sureties have renounced to the benefit of division.

15 L. 50; 4 A. 273.

ART. 3019.—A creditor can by no means claim the whole sum from the surety who applied for a division, when the other sureties have become insolvent since the time of that application. The same thing takes place, if the creditor has himself voluntarily divided his actions

15 L. 50; 4 A. 273.

ART. 3020.—The creditor may include in the same suit both the debtor and the security. If he obtains judgment against both, the security, who is entitled to the benefit of discussion, may insist that the judgment shall be first executed against the principal debtor.

1 R. 15.

SECTION II.—*Of the Effects of Suretyship between the Debtor and the Surety.*

ART. 3021.—The security, who has paid the debt, has his remedy against the principal debtor, whether the surety has been given with or without the knowledge of the debtor.

This remedy takes place both for the principal and interest, and for the costs which the surety may have been sentenced to pay; but with regard to the costs the remedy of the security begins only from the day he has given notice to the principal debtor, that a suit was commenced against him.

19 L. 385.

ART. 3022.—With regard to that remedy, the security has the same right of action and the same privilege of subrogation, which the law grants to joint co-debtors.

ART. 3023.—When there exist several principal joint debtors for the same debt, he who became a security to them all, has his remedy against each of them for the whole amount of what he may have paid.

ART. 3024.—The surety has no remedy against the principal debtor, who has paid a second time for want of being warned by the surety of the payment made by him. But the surety may have his action against the creditor for his reimbursement.

ART. 3025.—When the security has paid without being sued, and without informing the principal debtor, he shall have no recourse against the latter, provided that, at the time of payment, the debtor was in possession of such means as would have enabled him to have the debt declared extinct; but in this case the security has recourse to the creditor for restitution.

13 L. 142.

ART. 3026.—A security may, even before making any payment, bring a suit against the debtor to be indemnified by him :

1. When there exists a lawsuit against him for payment;

13 L. 142.

2. When the debtor has become a bankrupt, or is in a state of insolvency;

15 L. 351.

3. When the debtor was bound to discharge him within a certain time;

16 L. 136.

4. When the debt has been due by the expiration of the term for which it was contracted;

5. At the expiration of ten years, when the principal obligation is of a nature to last a longer time, unless the principal obligation, such as that of guardianship, be of a nature not to be extinguished before a determinate time.

2 A. 469; See 5 M. 674; 10 M. 196; 3 N. S. 575; 16 L. 133; 19 L. 385; 4 R. 422; 3 A. 631.

SECTION III.—*Of the Effects of Suretyship between the Sureties.*

ART. 3027.—When several persons have been sureties for the same debtor and for the same debt, the surety, who has satisfied the debt, has his remedy against the other sureties, in proportion to the share of each; but this remedy takes place only when such person has paid in consequence of a lawsuit instituted against him.

2 A. 334.

CHAPTER III.

OF THE EXTINCTION OF SURETYSHIP.

ART. 3028.—The obligation, which results from a suretyship, is extinguished by all the different modes in which other obligations may be extinguished; but the confusion which results in case the principal debtor or his surety should become heirs one to the other, does not extinguish the action of the creditor against the person who has become the security of the security.

ART. 3029.—The security may oppose to the creditor all the exceptions belonging to the principal debtor, and which are inherent to the

debt ; but he cannot oppose exceptions which are personal to the debtor.

14 L. 183 ; 2 A. 123, 160, 591.

ART. 3030.—The surety is discharged when, by the act of the creditor, the subrogation to his rights, mortgages and privileges, can no longer be operated in favor of the surety.

6 L. 514 ; 1 R. 212 ; 12 R. 206 ; 2 A. 183, 427, 940 ; 3 A. 674 ; See 3 N. S. 598 ; 3 L. 352 ; 9 L. 12 ; 1 R. 523 ; 4 R. 506 ; 6 R. 47 ; 5 A. 266.

ART. 3031.—The voluntary acceptance, on the part of the creditor, of an immovable or any other property, in payment of the principal debt, is a full discharge of the surety, even in case the creditor should be afterwards evicted from the property so accepted.

ART. 3032.—The prolongation of the term granted to the principal debtor without the consent of the surety, operates a discharge of the latter.

10 R. 412 ; 11 R. 33 ; 1 A. 192 ; 2 A. 940 ; See 4 M. 639 ; 3 N. S. 598 ; 7 N. S. 13 ; 8 N. S. 278 ; 4 L. 294, 407 ; 16 L. 218 ; 18 L. 470 ; 19 L. 211 ; 3 R. 299 ; 4 R. 276 ; 5 R. 249 ; 6 R. 399 ; 9 R. 240 ; 1 R. 33 ; 1 A. 192.

CHAPTER IV.

OF THE LEGAL AND JUDICIAL SURETIES.

ART. 3033.—Whenever a person is bound by law, or by a judgment, to give a surety, he must present one who has the qualifications required in article 3011.

3 A. 619 ; 6 A. 326 ; See 3011.

ART. 3034.—The person, who can give no security, is admitted to give a pledge or other satisfaction sufficient to secure the debt, provided that the thing given in pledge may be kept without difficulty or risk.

He may also deposit in the hands of the public officer, whose duty it is to receive the surety, the sum in which he is required to give it.

2 A. 132.

ART. 3035.—A judicial surety cannot demand the discussion of the property of the principal debtor.

12 M. 79 ; 3 N. S. 575 ; 6 N. S. 495 ; 9 L. 227 ; 19 L. 497 ; 9 R. 45 ; 1 A. 122 ; See 10 R. 130, 191 ; 1 R. 266.

ART. 3036.—The person, who has become the surety of the judicial surety, cannot demand the discussion of the property of the principal debtor, nor of the surety.

ART. 3037.—The effects of judicial surety are determined in the laws regulating judicial proceedings.

1 A. 122 ; 3 A. 37.

TITLE XVII.

OF TRANSACTION OR COMPROMISE.

ART. 3038.—A transaction or compromise is an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.

This contract must be reduced to writing.

3 A. 94; 6 A. 528.

ART. 3039.—A man to transact, must have the capacity to dispose of the things included in the transaction.

The tutor or curator of a minor or of a person interdicted or absent, cannot make a transaction without being authorized thereto by the judge.

ART. 3040.—Transactions regulate only the differences which appear clearly to be comprehended in them by the intention of the parties, whether it be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them.

The renunciation, which is made therein to all rights, claims and pretensions, extends only to what relates to the differences on which the transaction arises.

1 R. 307.

ART. 3041.—If he who has transacted concerning a right which he had in his own person, acquires afterwards a like right which belonged to another, the transaction cannot be prejudicial to his new right.

ART. 3042.—One may add to a transaction the stipulation of a penalty against the party who fails to perform it; and in this case the non-performance of what has been agreed on, gives a right to exact the penalty according to the tenor of the agreement, and pursuant to the rules recited in the title of *conventional obligations*.

ART. 3043.—The creditor who transacts with the surety of his debtor, may discharge the surety only, and the transaction will not diminish his right against the debtor. But if it is with the debtor himself that he has transacted, the surety will likewise have the benefit of the transaction, because his obligation is only an accessory to that of the principal debtor.

ART. 3044.—A transaction made by one of the interested parties, is not binding for the others, and cannot be opposed by them.

ART. 3045.—Transactions have, between the interested parties, a force equal to the authority of things adjudged. They cannot be attacked on account of any error in law or any lesion. But an error in calculation may always be corrected.

7 L. 17; 3 A. 94; 5 A. 627.

ART. 3046.—A transaction may be rescinded notwithstanding, whenever there exists an error in the person or on the matter in dispute. It may likewise be rescinded in the cases where there exists fraud or violence.

4 L. 461; 1 A. 320; 3 A. 492.

ART. 3047.—A transaction may also be rescinded, when it has been made in execution of a title which is null, unless the parties have expressly compromised on the nullity.

1 A. 320.

ART. 3048.—A compromise entered into on documents which have since been found false, is null *in toto*.

4 L. 461; 4 A. 44.

ART. 3049.—A transaction respecting a suit terminated by a judgment, which has acquired the force of the thing adjudged, and of which the parties, or either of them, was ignorant, is null. If, however, the judgment is one from which there could be an appeal, the transaction is valid.

ART. 3050.—When the parties have compromised generally on all the differences, which they might have had with one another, the titles which they then know nothing of, and which were afterwards discovered, are not a cause of rescinding the transaction, unless they have been kept concealed on purpose by the deed of one of the parties.

But the transaction becomes void, if it relates only to an object, on which it is proved by the titles newly discovered, that one of the parties has no right at all.

7 L. 35.

TITLE XVIII.

OF RESPITE.

ART. 3051.—A respite is an act by which a debtor, who is unable to satisfy his debts at the moment, transacts with his creditors, and obtains from them time or delay for the payment of the sums which he owes to them.

ART. 3052.—The respite is either voluntary or forced.

It is voluntary, when all the creditors consent to the proposal, which the debtor makes to pay in a limited time the whole or a part of his debt.

It is forced, when a part of the creditors refuse to accept the debtor's proposal, and when the latter is obliged to compel them by judicial authority to consent to what the others have determined in the cases directed by law.

ART. 3053.—The forced respite takes place when the creditors do not all agree, for then the opinion of the three-fourths in number and in amount prevails over that of the creditors forming the other fourth, and the judge shall approve such opinion, and it shall be binding on the other creditors who did not agree to it.

Stat. 27th April, 1843, p. 51.—The insolvent laws of said State, in force at the date of the passage of the last bankrupt law of the United States, be and the same are hereby declared to be in full force and virtue: *Provided*, that the article 3053 of the Louisiana Code be so amended that the opinion of a majority of the creditors, in number and amount, shall prevail.

9 M. 390; 3 N. S. 446, 506; 8 L. 467.

ART. 3054.—But in order that a respite may produce that effect, it is necessary :

1. That the debtor should deposit in the office of the clerk of the court of his domicil, to whom he presents his petition for calling his creditors, a true and exact schedule, sworn to by him, of all his movable and immovable property, as well as of his debts ;

2. That a meeting of the creditors of such debtor, domiciliated in the State, shall be called on a certain day at the office of a notary public, by order of the judge, at which meeting the creditors shall be summoned to attend by process issued from the court, if the creditors live within the parish where the meeting shall take place, or by letters addressed to them by the notary, if they are not residing in the parish ;

3. That the creditors be ordered to attend in ten days, if they are all living in the parish of the judge who gives the order, and in thirty days, if there are some of them residing out of the parish ;

4. That this meeting, as well as its object, be advertised in English and in French, by papers posted up in the usual places, and also by three publications in English and French in the newspapers, if any be printed within the extent of the jurisdiction of the judge who grants the order ;

5. That the creditors explain exactly the amount of the sums which they claim, and make oath before the notary holding the meeting, that they are justly and lawfully due.

The creditors who do not make this oath, shall not have the right of voting, and their credits shall not be counted among those by which it is to be determined whether the respite is granted or not.

ART. 3055.—Absent creditors, and who are not domiciliated in the State, are not, in any case, summoned to the meeting. They are to be represented by an attorney, whom it is the duty of the judge to appoint for them.

The duties of that attorney are confined to establishing, as far as possible, the debts of the absentees, and to seeing that the proceedings are conducted legally ; he cannot grant any thing in the name of the persons whom he represents.

ART. 3056.—It is not necessary that the creditors should all be together at the deliberation ; as they arrive at the place of meeting, each may take the oath and express his will.

ART. 3057.—When it has not been possible to receive the declarations of all the creditors in a single day, the notary may adjourn the meeting to the day following ; and if those two days are not sufficient,

he may adjourn it to the next; but the meeting must always be closed the tenth day at the latest.

ART. 3058.—In order that the contract of respite may be effectual, it must be homologated by the judge who ordered the meeting of the creditors.

3 L. 37; See 3065.

ART. 3059.—Every opposition to the homologation must be made in writing within ten days, dating from that on which the proces verbal of the deliberation of the creditors was returned to the clerk's office.

The reasons on which the opposition is founded must be expressed.

ART. 3060.—The property of the debtor is not hypothecated, by reason of the respite, for the payment of the mass of the debts, unless the respite has been granted on the express condition that this hypothecation shall exist.

But the creditors who are obliged to abide by the will of the majority, may require that the debtor shall furnish security, that the property of which he is left in possession shall not be alienated; or in case it is, that the money arising from the sale shall be employed in paying the debts existing at the time of the respite.

ART. 3061.—If the debtor has solicited the remission of a portion of his debts, the creditors who grant it are alone bound, and this discharge does not in any way affect the others.

Those creditors, even, who have consented on condition that the others should also accede to the demands of the debtor, are not bound, if a single one refuse.

ART. 3062.—The following classes of persons cannot be compelled to enter into any contract of respite or remission :

Privileged creditors, of what nature soever their privileges may be, and creditors who have a special mortgage by public act ;

Minors, for the balance of account of their tutorship or curatorship ;

Wives for their dotal rights, or for that of reclaiming their property.

Therefore, the privileged creditors, and those who have a special mortgage as aforesaid, cannot be deprived by any respite, though agreed to by three-fourths of the creditors in number and in amount, of the right of seizing the property on which they have a privilege; but if such property do not prove sufficient to satisfy their debt, they shall be restrained from acting for the surplus, either against the person of their debtor, or against those of his effects on which they have no privilege, except after the expiration of the term granted by the respite.

But creditors having a general mortgage are bound by the respite, in the same manner as ordinary creditors.

4 L. 471.

ART. 3063.—The time allowed to a debtor in a forced respite, cannot exceed three years; and if the creditors of the three-fourths in number and in amount, have granted to him more time, the creditors, who are opposed to the respite, may cause this delay to be reduced to the legal time, saving to the debtor the right, when it shall be expired, to call again these creditors in order to obtain a new delay, which, in

this last case, shall be granted only, if all these creditors unanimously consent to it.

ART. 3064.—Any one who has claimed the benefit of the cession of goods, cannot afterwards pray for a mere respite.

ART. 3065.—When the creditors refuse a respite, the cession of property ensues; and the proceedings continue, as if the cession had been offered in the first instance.

See 3 L. 39; See 3058.

TITLE XIX.

OF ARBITRATION.

ART. 3066.—A submission is a covenant by which persons who have a lawsuit or difference with one another, name arbitrators to decide the matter, and bind themselves reciprocally to perform what shall be arbitrated.

5 A. 133.

ART. 3067.—A submission must be reduced to writing.

ART. 3068.—They who cannot bind themselves cannot make a submission, such as a married woman, unless it be under her husband's authority.

An attorney, in fact, cannot make a submission without a special power.

The tutors or curators of minors, of persons interdicted or absent, cannot do it without being authorized by the judge.

ART. 3069.—Parties may submit either all their differences, or only some of them in particular; and likewise they may submit to arbitration a lawsuit already instituted or only in contemplation, and generally every thing which they are concerned in, or which they may dispose of.

ART. 3070.—One may submit to arbitration the damages incurred for a public offence; but it is without any prejudice to the prosecution of it in behalf of the State.

ART. 3071.—The power of arbitrators is limited to what is explained in the submission.

ART. 3072.—If the submission does not limit any time, the power of the arbitrators may continue in force during three months from the date of the submission, unless the parties agree to revoke it.

13 L. 462.

ART. 3073.—It is usual to undergo a penalty of a certain sum of money in the submission, which the person who shall contravene the award, or bring appeal therefrom, shall be bound to pay to the other who is willing to abide by it; but this covenant is not obligatory, and the submission may subsist without the penalty.

ART. 3074.—All persons may be arbitrators, except such as are under some incapacity or infirmity, which renders them unfit for that function.

Therefore minors under the age of eighteen years, persons interdicted, those who are deaf or dumb, cannot be arbitrators.

ART. 3075.—Women who, on account of their sex, cannot be judges, are likewise incapable of being named arbitrators.

ART. 3076.—There are two sorts of arbitrators :

The arbitrators properly so called ;

And the amicable compounders.

ART. 3077.—The arbitrators ought to determine as judges, agreeably to the strictness of the law.

Amicable compounders are authorized to abate something of the strictness of the law, in favor of the natural equity.

Amicable compounders are, in other respects, subject to the same rules which are provided for the arbitrators by the present title.

7 L. 477 ; 1 R. 202 ; See 17 L. 285 ; 18 L. 417.

ART. 3078.—Before examining the difference to them submitted, the arbitrators ought to take an oath before a judge, or justice of the peace, to render their award with integrity and impartiality in the cause which is laid before them.

ART. 3079.—The parties, who have submitted their differences to arbitrators, must make known their claims, and prove them, in the same manner as in a court of justice, by producing written or verbal evidence in the order agreed on between them or fixed by the arbitrators.

ART. 3080.—The arbitrators shall appoint a time and place for examining the matter to them submitted, and give notice thereof to the parties or to their attorneys.

ART. 3081.—The parties must attend the arbitrators, either in person or by their attorney, with their witnesses and documents. If one or both of them should not appear, the arbitrators may proceed and inquire into the affair in their absence.

ART. 3082.—Arbitrators have no authority to compel witnesses to appear before them or to administer an oath ; but at the request of arbitrators it will be the duty of justices of the peace to compel witnesses to appear and to administer the oath to them.

ART. 3083.—If the arbitrators disagree, another shall decide, and that other is called an umpire.

ART. 3084.—The nomination of the umpire is either made by the parties themselves at the time of the submission, or left to the discretion of the arbitrators.

ART. 3085.—Whenever the umpire has not been appointed by the submission, the arbitrators have the power to appoint him, though such power is not mentioned in the submission. But if the arbitrators cannot agree on this election, the umpire shall be appointed *ex officio* by the judge.

ART. 3086.—The umpire shall take an oath similar to that taken by the arbitrators, before examining the matter or the point submitted to him.

ART. 3087.—The arbitrators, who have once consented to act as such, ought to determine the suit or the difference which is submitted to them, as soon as possible, and within the time fixed by the submission.

ART. 3088.—Arbitrators cannot exceed the power which is given to them; and if they exceed it, their award is null for so much.

ART. 3089.—The authority of arbitrators extends only to the things contained in the submission, unless it has been stated that they shall have power to decide all disputes which may arise between the parties in the course of the arbitration.

ART. 3090.—The arbitrators ought to give their award within the time limited by the submission, and it would be null, if it were given after the time is expired.

ART. 3091.—Nevertheless the parties may give power to the arbitrators to prolong the time, and in this case their power lasts during the time of the prorogation.

ART. 3092.—If the submission specifies a certain time for the examination of the cause which the arbitrators are to decide, they cannot give their award till that time is expired.

ART. 3093.—If there are several arbitrators named by the submission, they cannot give their award, unless they all see the proceedings and try the cause together; but it is not necessary that the award be signed by them all.

ART. 3094.—The arbitrators shall fix by their award the amount of the sum which they sentence one or several of the parties to pay to the other or others, though the omission of this does not annul the award

1 R. 202.

ART. 3095.—The arbitrators may likewise pronounce by their award on the interest and costs; but their silence on that subject is not a cause of nullity.

ART. 3096.—The award, in order to be put in execution, ought to be approved by the judge; but this formality is only intended to invest the award with a sufficient authority to ensure its execution, and not to submit to the judge the examination of its merits, except in case an appeal is brought before him.

3 L. 486; 7 L. 477; 18 L. 417; See 1 R. 202.

ART. 3097.—He who is not satisfied with the award, may appeal from it, though the parties had renounced such appeal by the submission; but the appellant, before being heard on his appeal, ought to pay the penalty stipulated in the submission, if any has been stipulated; and this penalty shall ever be due, though the appellant afterwards renounces his appeal; but if he succeeds to have the award reversed, either in whole or in part, the court who shall pronounce on the appeal, shall order the repayment of the penalty; but if the award is confirmed, the penalty, which has been paid, shall operate no diminution on the amount of the award.

ART. 3098.—The arbitrators having once given their award, cannot retract it nor change any thing in it.

ART. 3099.—The submission and power given to the arbitrators are put at an end by any one of the following causes:

1. By the expiration of the time limited, either by the submission or by law, though the award should not be yet rendered;
2. By the death of one of the parties or arbitrators;

3. By the final award rendered by the arbitrators;
4. When the parties happen to compromise, touching the thing in dispute, or when this thing ceases to exist.

TITLE XX.

OF PLEDGE.

ART. 3100.—The pledge is a contract by which one debtor gives something to his creditor as a security for his debt.

ART. 3101.—There are two kinds of pledge:

The pawn;

The antichresis.

ART. 3102.—A thing is said to be pawned, when a movable thing is given as security; and the antichresis, when the security given consists in immovables or slaves.

CHAPTER I.

GENERAL PROVISIONS.

ART. 3103.—Every lawful obligation may be enforced by the auxiliary obligation of pledge.

ART. 3104.—If the principal obligation be conditional, that of the pledge is confirmed or extinguished with it.

ART. 3105.—If the obligation is null, so also is the pledge.

ART. 3106.—The obligation of pledge annexed to an obligation which is purely natural, is rendered valid only when the latter is confirmed and becomes executory.

ART. 3107.—Pledge may be given not only for an obligation consisting in money, but also for one having any other object, for example, a surety. Nothing prevents one person from giving a pledge to another for becoming his surety with a third.

ART. 3108.—A person may give a pledge, not only for his own debt, but for that of another also.

ART. 3109.—A debtor may give in pledge whatever belongs to him.

But with regard to those things, in which he has a property which may be divested, or which is subject to encumbrance, he cannot confer on the creditor, by the pledge, any further right than he had himself.

See 2 L. 514.

ART. 3110.—To know whether the thing given in pledge, belonged to the debtor, reference must be had to the time when the pawn was made.

ART. 3111.—If at the time of the contract, the debtor had not the property of the thing pledged, but has acquired it since, by what title soever, his ownership shall relate back to the time of the contract, and the pledge shall stand good.

ART. 3112.—One person may pledge the property of another, provided it be with the express or tacit consent of the owner.

ART. 3113.—But this tacit consent must be inferred from circumstances, so strong as to leave no doubt of the owner's intention, as if he was present at the making of the contract, or if he himself delivered to the creditor the thing pawned.

ART. 3114.—Although the property of another cannot be given in pledge without his consent, yet so long as the owner refrains from claiming it, the debtor, who has given it in pledge, cannot seek to have it restored, until his debt has been entirely discharged.

ART. 3115.—Tutors and curators of minors and of persons under interdict, curators of vacant estates and of absent heirs, testamentary executors, and other administrators named or confirmed by a judge, cannot give in pledge the property confided to their administration, without being expressly authorized in the manner prescribed by law.

2 A. 572.

ART. 3116.—An attorney cannot give in pledge the property of his principal, without the consent of the latter, or an express power to that effect.

Nevertheless, where the power of attorney contains a general authority to mortgage the property of the principal, this power includes that of giving it in pledge.

ART. 3117.—The property of cities and other corporations can only be given in pledge, according to the rules and subject to the restrictions prescribed on that head by their respective acts of incorporation.

ART. 3118.—A partner cannot, for his own concerns, give in pledge the partnership property without the consent of his associates. He cannot do it even for the partnership concerns, without such consent, unless he be vested with the management of the co-partnership.

This rule admits of exceptions in matters of commercial partnership.

ART. 3119.—It is essential to the contract of pledge that the creditor be put in possession of the thing given to him in pledge, and consequently that actual delivery of it be made to him, unless he has possession of it already by some other right.

1 R. 516.

ART. 3120.—But this delivery is only necessary with respect to corporeal things; as to incorporeal rights, such as debts, which are given in pledge, the delivery is merely fictitious and symbolical.

See 3125; 1 R. 516; 1 A. 340.

CHAPTER II.

OF PAWN.

ART. 3121.—One may pawn every corporeal thing, which is susceptible of alienation.

One may even pawn money, as a security for performing or refraining to perform an act.

ART. 3122.—One may, in fine, pawn incorporeal movables, such as debts and other claims of that nature.

ART. 3123.—When a debtor wishes to pawn a claim on another person, he must make a transfer of it in the act of pledge, and deliver to the creditor to whom it is transferred, the note or obligation which proves its existence, if it be under private signature, and must indorse it, if it be negotiable.

2 L. 361, 356; 17 L. 189, 428; See 3127, 3128.

ART. 3124.—The pawn invests the creditor with the right of causing his debt to be satisfied by privilege and in preference to the other creditors of his debtor, out of the product of the movable, corporeal or incorporeal, which has been thus burdened.

8 L. 433; 8 R. 10.

ART. 3125.—But this privilege shall take place against third persons, only in case the pawn is proved by an act made either in a public form or under private signature; provided that in this last case it should be duly registered in the office of a notary public at a time not suspicious; provided also, that whatever may be the form of the act, it mentions the amount of the debt as well as the species and nature of the thing given in pledge, or has a statement annexed thereto of its number, weight and measure.

Stat. 12th February, 1852, p. 15.—§ 1. When a debtor wishes to pawn promissory notes, bills of exchange, stocks, obligations or claims upon other persons, he shall deliver to the creditor the notes, bills of exchange, certificates of stock, or other evidences of the claims or rights so pawned; and such pawn so made, without further formalities, shall be valid, as well against third persons as against the pledgors thereof, if made in good faith.

§ 2. All pledges of movable property may be made by private writing, accompanied by actual delivery and the delivery of property, on deposit in a warehouse, shall pass by the private assignment of the warehouse receipt, so as to authorize the owner to pledge such property; and such pledges so made, without further formalities, shall be valid as well against third persons, as against the pledgors thereof, if made in good faith.

§ 3. If a credit not negotiable be given in pledge, notice of the same must be given to the debtor.

§ 4. In all pledges of movable property, it shall be lawful for the pledgor to authorize the sale, or other disposition of the property pledged, in such manner as may be agreed upon by the parties, without the intervention of courts of justice.

8 N. 570; 5 N. S. 618; 2 L. 365, 357, 459; 3 L. 528; 8 L. 423, 453; 1 A. 443; 8 A. 477, 478; 6 A. 517.

ART. 3126.—Nevertheless, the acts of pledge in favor of the banks of this State, shall be considered as forming authentic proof, if they have been passed by the cashiers of those banks or their branches, and contain a description of the objects given in pledge, in the manner directed by the preceding article.

1 A. 443.

ART. 3127.—When the thing given in pledge consists of a credit not negotiable, to enable the creditors to enjoy the privilege above mentioned, it is necessary, not only that the proof of the pledge be made by an authentic act, or by act under private signature, duly recorded, as stated in the preceding article, but that a copy of this act shall have been duly served on the debtor of the credit given in pledge.

2 L. 361, 356; 17 L. 190; See 3125 and Amendment; See 3123.

ART. 3128.—On the other hand, this notification of the act of pledge to the person owing the debt pledged, shall not be necessary, if the debt is evidenced by a note or other obligation payable to the bearer or to order, because in that case it will suffice that the note or obligation shall have been indorsed by the person pledging it, to invest the creditor with the privilege above mentioned.

2 L. 361; 14 L. 452; 17 L. 190; 2 A. 338; See 3123.

ART. 3129.—In no case does this privilege subsist on the pledge, except when the thing pledged, if it be a corporeal movable, or the evidence of the debt, if it be a note or other obligation under private signature, has been actually put and remained in the possession of the creditor, or of a third person agreed on by the parties.

1 L. 474; 1 A. 340; 2 A. 338; 6 A. 23, 517.

ART. 3130.—When several things have been pawned, the owner cannot retake one of these without satisfying the whole debt, though he offers to pay a certain amount of it in proportion to the thing which he wishes to get.

1 R. 516.

ART. 3131.—The creditor, who is in possession of the pledge, cannot be compelled to return it, but when he has received the whole payment of the principal as well as the interest and costs.

1 R. 516.

ART. 3132.—The creditor cannot, in case of failure of payment, dispose of the pledge, but may apply to the judge to order that the thing shall remain to him in payment for as much as it shall be estimated by two appraisers, or shall be sold at public auction, at the choice of the debtor.

Any clause which should authorize the creditor to appropriate the pledge to himself, or dispose thereof without the aforesaid formalities, shall be null.

8 R. 10; See 3124.

ART. 3133.—Until the debtor be divested of his property, if it is the case, he remains the proprietor of the pledge, which is in the hands of the creditor only as a deposit to secure his privilege on it.

ART. 3134.—The creditor is answerable agreeably to the rules which have been established under the title of *conventional obligations*, for the loss or decay of the pledge which may happen through his fault.

On his part, the debtor is bound to pay to the creditor all the useful and necessary expenses which the latter has made for the preservation of the pledge.

1 A. 344; See 19 L. 556; See 1902.

ART. 3135.—The fruits of the pledge are deemed to make a part of it, and therefore they remain, like the pledge, in the hands of the creditor; but he cannot appropriate them to his own use, and he is bound, on the contrary, to give an account of them to the debtor, or to deduct them from what may be due to him.

ART. 3136.—If it is a credit which has been given in pledge, and if the credit brings interest, the creditor shall deduct this interest from that which may be due to him; but if the debt, for the security of which the claim has been given, brings no interest by itself, the deduction shall be made on the principal of the debt.

ART. 3137.—If the debt, which has been given in pledge, becomes due before it is redeemed by the person pawning it, the creditor by virtue of the transfer which has been made to him, shall be justified in receiving the amount, and in taking measures to recover it. When received, he must apply it to the payment of the debt due to himself and restore the surplus, should there be any, to the person from whom he held it in pledge.

ART. 3138.—The pawn cannot be divided, notwithstanding the divisibility of the debt between the heirs of the debtor and those of the creditor.

The debtor's heir, who has paid his share of the debt, cannot demand the restitution of his share in the pledge, so long as the debt is not fully satisfied.

And reciprocally the heir of the creditor, who has received his share of the debt, cannot return the pledge to the prejudice of those of his co-heirs who are not satisfied.

1 R. 516.

ART. 3139.—If the proceeds of the sale exceed the debt, the surplus shall be restored to the proprietor; if, on the contrary, they are not sufficient to satisfy it, the creditor is entitled to claim the balance out of the debtor's other property.

ART. 3140.—The debtor who takes away the pledge without the creditor's consent, commits a sort of theft.

ART. 3141.—When the creditor has been deceived as to the substance or quality of the thing given in pledge, he may claim another thing in its stead, or demand immediately his payment, though the debtor be solvent.

ART. 3142.—The creditor cannot acquire the pledge by prescription, whatever may be the time of his possession.

CHAPTER III

OF ANTICHRESIS.

ART. 3143.—The antichresis shall be reduced to writing.

The creditor acquires by this contract the right of reaping the fruits or other revenues of the immovables or slaves to him given in pledge, on condition of deducting annually their proceeds from the in-

terest, if any are due to him, and afterwards from the principal of his debt.

See 3 L. 154.

ART. 3144.—The creditor is bound, unless the contrary be agreed on, to pay the taxes, as well as the annual charges of the property which have been given to him in pledge.

He is likewise bound, under penalty of damages, to provide for the keeping and useful and necessary repairs of the pledged estate, saving to himself the right of levying on the fruits and revenues all the expenses respecting such charges.

He ought also to provide for the expenses respecting the maintenance of the slaves who have been given to him in pledge.

ART. 3145.—The debtor cannot, before the full payment of the debt, claim the enjoyment of the immovables or slaves which he has given in pledge.

But the creditor who wishes to free himself from the obligations mentioned in the preceding articles, may always, unless he has renounced this right, compel the debtor to retake the enjoyment of his immovable or slaves.

ART. 3146.—The creditor does not become proprietor of the pledged immovable or slaves, by failure of payment at the stated time; any clause to the contrary is null; and in this case it is only lawful for him to sue his debtor before the court in order to obtain a sentence against him and to cause the objects, which have been put in his hands in pledge, to be seized and sold.

ART. 3147.—When the parties have agreed that the fruits or revenues shall be compensated with the interest, either in whole or only to a certain amount, this covenant is performed as every other which is not prohibited by law.

ART. 3148.—Every provision which is contained in the present title with respect to the antichresis, cannot prejudice the rights which third persons may have on the immovable, or on the slaves, given in pledge by way of antichresis, such as a privilege or mortgage.

The creditor who is in possession by way of antichresis, cannot have any right of preference above the other creditors arising from the difference of the pawn; but if he has, by any other title, some privilege or mortgage lawfully established or preserved thereon, he will come in his rank like every other creditor.

TITLE XXI.

OF PRIVILEGES.

CHAPTER I.

GENERAL PROVISIONS.

ART. 3149.—Whoever has bound himself personally, is obliged to fulfil his engagement out of all his property, movable and immovable, present and future.

ART. 3150.—The property of the debtor is the common pledge of his creditors, and the proceeds of its sale must be distributed among them ratably, unless there exist among the creditors some lawful causes of preference.

15 L. 122; 3 A. 423.

ART. 3151.—Lawful causes of preference are privileges and mortgages.

3 A. 430.

ART. 3152.—Privilege can be claimed only for those debts to which it is expressly granted in this code.

2 L. 93; 3 L. 154; 4 L. 222; 11 L. 28; 18 L. 70; 1 R. 21; 2 R. 154; 7 R. 159; 11 R. 73, 279; 12 R. 172; 2 A. 549, 599, 774, 789, 961; 3 A. 189, 423; 4 A. 310; 5 A. 349, 570; 6 A. 112; See S N. S. 606; 2 L. 113; 17 L. 153, 439, 596; 17 L. 443; 18 L. 73, 331.

CHAPTER II.

OF THE SEVERAL KINDS OF PRIVILEGES.

ART. 3153.—Privilege is a right, which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors, even those who have mortgages.

2 A. 549.

ART. 3154.—Among creditors who are privileged, the preference is settled by the different nature of their privileges.

ART. 3155.—The creditors who are in the same rank of privileges, are paid in concurrence, that is, on an equal footing.

ART. 3156.—Privileges may exist, either on movables or immovables, or on both at once.

CHAPTER III.

OF PRIVILEGES ON MOVABLES.

ART. 3157.—Privileges are either general, or special on certain movables.

SECTION I.—*Of General Privileges on Movables.*

ART. 3158.—The debts which are privileged on all the movables in general, are those hereafter enumerated, and are paid in the following order.

1. Funeral charges ;
2. Law charges ;

17 L. 207.

3. Charges, of whatever nature, occasioned by the last sickness, concurrently among those to whom they are due.

7 R. 91.

4. The wages of servants for the year past, and so much as is due for the current year ;

2 A. 1.

5. Supplies of provisions made to the debtor or his family, during the last six months, by retail dealers, such as bakers, butchers, grocers and during the last year, by keepers of boarding houses and taverns ;

6. The salaries of clerks, secretaries, and other persons of that kind ;

3 A. 428 ; 1 R. 445 ; 1 A. 21, 22.

7. Dotal rights due to wives by their husbands.

§ 1.—*Of Funeral Charges.*

ART. 3159.—Funeral charges are those which are incurred for the interment of a person deceased.

ART. 3160.—If the property of the deceased is so encumbered as not to suffice for the payment of his creditors, the funeral charges may, upon the request of any of them, be reduced by the judge to a reasonable rate, regard being had to the station of life which the deceased held, and which his family holds.

3 A. 436.

ART. 3161.—But, in case of the reduction, the judge can never allow, at the expense of the estate, on any account whatever, more than two hundred dollars for all the expenses occasioned by the interment of the deceased.

3 A. 436.

§ 2.—*Of Law Charges.*

ART. 3162.—Law charges are such as are occasioned by the prosecution of a suit before the courts. But this name applies more particularly to the costs, which the party cast has to pay to the party gaining the cause. It is in favor of these only that the law grants the privilege.

17 L. 207 ; 11 R. 28.

ART. 3163.—The creditor enjoys this privilege, not with regard to all the expenses which he is obliged to incur in obtaining judgment against his debtor, but with regard only to such as are taxed according to law, and such as arise from the execution of the judgment.

17 L. 208, 11 R. 28.

ART. 3164.—The costs for affixing seals and making inventories for the better preservation of the debtor's property; those which occur in cases of failure or cession of property, for the general benefit of creditors, such as fees to lawyers appointed by the court to represent absent creditors, commissions to syndics; and finally, costs incurred for the administration of estates, which are either vacant or belonging to absent heirs, enjoy the privileges established in favor of law charges.

17 L. 208; 1 R. 270; 1 A. 21; 3 A. 436; See 10 L. 438.

ART. 3165.—Not only has the creditor no privilege for the costs which are not taxed, or which are not included among those mentioned above, but he has no right to demand them even from the debtor.

17 L. 209.

§ 3.—*Of Expenses during the last Sickness.*

ART. 3166.—The last sickness is considered to be that of which the debtor died. It is the expenses of this sickness that enjoy the privilege.

7 R. 91.

ART. 3167.—But if the sickness with which the deceased was attacked, and of which he died, was a chronic disease, the progress of which was slow, and which only occasioned death after a long while, then the privilege shall only commence from the time when the malady became so serious as to prevent the deceased from attending to his business, and confined him to his bed or chamber.

ART. 3168.—However long the sickness may have lasted after arriving at the point which prevented him from attending to his affairs, the privilege granted for the expense it has occasioned, can only extend to one year before the decease.

ART. 3169.—The expenses of the last sickness comprehend the fees of physicians and surgeons, the wages of nurses, and the price due to the apothecary for medicines supplied by him to the deceased for his personal use during his last illness.

1 A. 224.

ART. 3170.—The accounts relating to these expenses must be fixed by the judge, in case of dispute, after hearing testimony as to the value of the services rendered, or care afforded, or as to the true value of medicines supplied, unless there has been a contract between the parties, in which case it must be observed.

ART. 3171.—This privilege subsists, not only for the expenses of the last sickness of the debtor, it subsists also for those of the last sickness of children under his authority, but it is exercised subject to the rules laid down above.

§ 4.—*Of the Wages of Servants.*

ART. 3172.—Servants or domestics are those who receive wages, and stay in the house of the person paying and employing them for his ser-

vice or that of his family; such are, valets, footmen, cooks, butlers, and others who reside in the house.

G A. 275.

ART. 3173.—Domestics or servants must make a demand of their wages, within a year from the time when they left service, but their privilege is only for the year past, and so much as is due for the present year.

ART. 3174.—As to preceding years which may be due, the wages may be recovered, if there is any balanced account, note or obligation of the debtor; but they enjoy no privilege. They form an ordinary debt for which domestics or servants come in by contribution with other ordinary creditors.

§ 5.—*Of Supplies of Provisions.*

ART. 3175.—Such supplies of provisions as confer a privilege, are those which are made by retail dealers, that is, persons keeping an open shop, and selling, by small portions, provisions and liquors.

G A. 275.

ART. 3176.—Retail dealers, who have furnished such supplies, ought to demand their money within a year from the time of the first supply; but they have a privilege only for the last six months, and for the rest they are placed on the footing of ordinary creditors.

3 L. 154.

ART. 3177.—Dealers by wholesale in provisions and liquors do not enjoy any privilege on the property of their debtor, further than what they have acquired by mortgage, or by a judgment duly recorded.

ART. 3178.—It is not keepers of taverns and hotels alone, who are comprehended in the term *masters of boarding-houses*, and enjoy a privilege for their supplies, but all persons who make a business of receiving persons at board for a fixed price.

ART. 3179.—Teachers and preceptors, who receive into their houses young persons to be brought up, fed and instructed, enjoy the same privilege which is given to keepers of boarding-houses.

ART. 3180.—The privilege of keepers of boarding-houses, taverns, and other persons comprised in this class, extends to the last year due, and to so much as has expired of the current year.

§ 6.—*Of the Privilege of Clerks, and that of Wives for their Dower.*

ART. 3181.—Although clerks, secretaries and other agents of that sort cannot be included under the denomination of servants, yet a privilege is granted them for their salaries for the last year elapsed, and so much as has elapsed of the current year. This privilege, however, cannot be enforced until after that of the furnishers of provisions.

3 A. 423.

ART. 3182.—The privilege granted to wives on the movable effects of their husbands, exists for the dotal property only, and can only be

enforced on such effects as were in the husband's possession at the dissolution of the marriage or co-partnership.

7 L. 487; 3 R. 276; 9 R. 142; See 2355.

SECTION II.—*Of the Privileges on particular Movables*

ART. 3183.—The privileges, enumerated in the preceding section, extend to all the movables of the debtor, without distinction.

There are some, which act only on particular movables and no other; and it is of these last that we shall treat in this and the following sections.

ART. 3184.—The debts which are privileged on certain movables, are the following:

1. The appointments of salaries of the overseer, for the year last past and so much as is due of the current year, on the product of the last crop and the crop at present in the ground;

12 R. 527; 2 A. 447; 3 A. 133.

2. The debt of a workman or artisan for the price of his labor, on the movable which he has repaired or made, if the thing continues still in his possession;

6 A. 232.

3. The rents of immovables and the hire of slaves employed in working the same, on the produce of the crop of the year, and on the proceeds of the furniture which is found in the house let, or on the farm, and of every thing which serves to the working of the farm;

2 A. 574; 5 A. 646.

4. The debt, on the pledge which is in the creditor's possession;

5. That of a depositor, on the price of the sale of the thing by him deposited;

6. The debt due for money laid out in preserving the thing;

7. The price due on movable effects, if they are yet in the possession of the purchaser;

3 A. 276.

8. The things which have been furnished by an innkeeper, on the property of the traveller which has been carried to his inn;

9. The carrier's charges and the accessory expenses, on the thing carried.

Stat. 23d March. 1843, p. 44.—§ 1. Article three thousand one hundred and eighty-four of the Civil Code be so amended as to insert in the first paragraph, after the word "overseer," the following words: "and debts due for necessary supplies furnished to any farm or plantation."

§ 2. The privilege of the overseer as granted in said article three thousand one hundred and eighty-four, shall be superior in rank to that of the furnisher of supplies, as granted by the present act.

§ 3. This act shall be in force from and after its promulgation.

§ 1.—*Of the Privilege of the Lessor.*

ART. 3185.—The right, which the lessor has over the products of the estate, and on the movables which are found on the place leased, for

his rent, is of a higher nature than mere privilege. The latter is only enforced on the price arising from the sale of movables to which it applies. It does not enable the creditor to take or keep the effects themselves specially. The lessor, on the contrary, may take the effects themselves, and retain them until he is paid.

17 L. 443; 1 R. 445; 2 A. 14.

ART. 3186.—The privilege of the lessor is enforced on the property subject to it in the manner described in the title of *lease* or *hiring*.

§ 2.—*Of the Privilege of the Creditor on the Thing Pledged.*

ART. 3187.—The creditor acquires the right of possessing and retaining the movable, which he has received in pledge, as a security for his debt, and may cause it to be sold for the payment of the same.

Hence proceeds the privilege which he enjoys on the thing.

ART. 3188.—For the exercise of this privilege it is necessary that all the requisites stated in the title of *pledge*, should be fulfilled.

§ 3.—*Of the Privilege of a Depositor.*

ART. 3189.—He who deposits a thing in the hands of another, still remains the owner of it.

Consequently, his claim to it is preferred to that of the other creditors of the depositary, and he may demand the restitution of it, if he can prove the deposit, in the same manner as is required in agreements for sums of money, and if the thing reclaimed be identically the same which he deposited.

9 L. 44; 17 L. 162.

ART. 3190.—If the depositary abuses his trust, by alienating the thing confided to his care; or if his heir sell it, not knowing that it had been given in deposit, the depositor retains his privilege on the price which shall be due.

§ 4.—*Of Expenses incurred for the preservation of the Thing.*

ART. 3191.—He who, having in his possession the property of another, whether in deposit or on loan, or otherwise, has been obliged to incur any expense for its preservation, acquires on this property two species of rights.

1 R. 186; 6 A. 362.

ART. 3192.—Against the owner of the thing, his right is in the nature of that of *pledge*, by virtue of which he may retain the thing until the expenses, which he has incurred, are repaid.

He possesses this qualified right of *pledge*, even against the creditors of the owner, if they seek to have the thing sold. He may refuse to restore it, unless they either refund his advance, or give him security that the thing shall fetch a sufficient price for that purpose.

ART. 3193.—Finally, he who has incurred these expenses, has a privilege against these same creditors, by virtue of which he has a preference over them out of the price of the thing sold, for the amount of such necessary charges as he shall have incurred for its preservation. This is the privilege in question in the present paragraph.

§ 5.—*Of the Privilege of the Vendor of Movable Effects.*

ART. 3194.—He who has sold to another any movable property, which is not paid for, has a preference, on the price of this property, over the other creditors of the purchaser, whether the sale was made on a credit or without, if the property still remains in the possession of the purchaser.

So that although the vendor may have taken a note, bond or other acknowledgment from the buyer, he still enjoys the privilege.

3 L. 154; 10 L. 63; 14 L. 261; 11 R. 140; 1 A. 80; 3 A. 40; See 5 R. 423; 2 A. 335.

ART. 3195.—But if he allows the things to be sold, confusedly with a mass of other things belonging to the purchaser, without making his claim, he shall lose the privilege, because it will not be possible, in such a case, to ascertain what price they brought.

4 R. 419.

ART. 3196.—If the sale was not made on credit, the seller may even claim back the things in kind, which were thus sold, as long as they are in possession of the purchaser, and prevent the resale of them, provided the claim for restitution be made within eight days of the delivery at farthest, and that the identity of the objects be established.

ART. 3197.—When the things reclaimed consist of merchandise, which is sold in bales, packages or cases, the claim shall not be admitted, if they have been untied, unpacked or taken out of the cases, and mixed with other things of the same nature belonging to the purchaser, so that their identity can no longer be established.

ART. 3198.—But if the things sold are of such a nature as to be easily recognized, as household furniture, even although the papers or cloths, which covered them at the time of delivery, be removed, the claim for restitution shall be allowed.

§ 6.—*Of the Privilege of the Innkeeper on the Effects of the Traveller.*

ART. 3199.—Those are called innkeepers, who keep a tavern or hotel, and make a business of lodging travellers.

ART. 3200.—Innkeepers have a privilege, or more properly a right of pledge, on the property of travellers who take their board or lodging with them, by virtue of which they may retain the property and have it sold, to obtain payment of what such travellers may owe them, on either of the accounts above mentioned.

14 L. 101.

ART. 3201.—Innkeepers enjoy this privilege on all the property which the traveller has brought to the inn, whether it belongs to him or not, because the property has become their pledge by the fact of its introduction into the inn. This privilege extends even to coined money

which may be found in the apartment of the traveller who has died in their house.

2 A. 129.

ART. 3202.—The term *travellers* applies to strangers and such as being transiently in a place where they have no domicile, take their board and lodging at an inn.

14 L. 101.

ART. 3203.—The innkeeper, who retains the property of a traveller for tavern expenses due to him, cannot sell it of his own authority; he must apply to a tribunal to have his debt ascertained, and the property seized and sold for the payment of it.

SECTION II.—*Of the Privilege on Ships and Merchandise.*

ART. 3204.—The following debts are privileged on the price of ships or other vessels, in the order in which they are placed :

1. Legal and other charges, incurred to obtain the sale of a ship or other vessel, and the distribution of the price ;

1 R. 312; 7 L. 457.

2. Debts for pilotage, wharfage and anchorage ;

3. The expenses of keeping the vessel from the time of her entrance into port, until sale, including the wages of persons employed to watch her ;

4. The rent of stores, in which the rigging and apparel are deposited.

5. The maintenance of the ship and her tackle and apparatus, since her return into port from her last voyage.

6. The wages of the captain and crew employed on the last voyage ;

8 L. 42.

7. Sums lent to the captain for the necessities of the ship during the last voyage, and reimbursement of the price of merchandise sold by him for the same purpose ;

1 L. 543; 15 L. 145; 4 A. 9.

8. Sums due to sellers, those who have furnished materials, and workmen employed in the construction, if the vessel has never made a voyage; and those due to creditors for supplies, labor, repairing, victuals, armament and equipment, previous to the departure of the ship, if she has already made a voyage ;

8 L. 191; 15 R. 549; 3 A. 40; 5 R. 423; 4 A. 9; See 17 L. 161.

9. Money lent on bottomry for refitting, victualling, arming and equipping the vessel before her departure ;

10. The premiums due for insurance made on the vessel, tackle and apparel, and on the armament and equipment of the ship ;

11. The amount of damage due to freighters for the failure in delivering goods which they have shipped, or for the reimbursement of damage sustained by the goods through the fault of the captain or crew.

See 12 L. 335.

Stat. 23 April, 1853, No. 192.—In all cases where any loss or damage has been caused to the person or property of any individual, by any carelessness, neglect or want of skill in the direction or management of any

steamboat, barge, flatboat, water-craft or raft, the party injured shall have a privilege to rank after the privileges specified by the Civil Code, article three thousand two hundred and four, and continue for the same length of time in the same manner provided for other privileges by the said article of the Civil Code upon such steamboat, barge, flatboat, water-craft or raft, for the amount of the loss or damage sustained, and may proceed by attachment or *in rem* to recover the same: Provided, however, that before so proceeding he, or if he be absent, his agent or attorney, shall swear to the amount of the loss or damage sustained, and file a bond with good and sufficient security, in favor of the owners of the steamboat, barge, flatboat, water-craft or raft, whomsoever they may be, whether their names be known or not, for a sum exceeding by one-half in amount of that which is claimed, as a security for the payment of such damages as the owners may recover against him in case it should be decided that the attachment or proceeding was wrongfully obtained: And, provided, further, that it shall be sufficient for the oath required to be taken by the agent or attorney to be to the best of his knowledge and belief.

ART. 3205.—The creditors, named in each number of the preceding article, come in together, and must all suffer a ratable diminution, if the fund be insufficient.

15 L. 142.

ART. 3206.—Creditors, having privileges on ships or other vessels, may pursue the vessel in the possession of any person who may have obtained it by virtue of a sale; in this case, however, a distinction must be made between a forced and a voluntary sale.

ART. 3207.—When the sale has been a forced one, the right of the purchaser to the property becomes irrevocable; he owes only the price of adjudication, and over it the creditors exercise their privilege, in the order above prescribed.

8 L. 42.

ART. 3208.—When the sale is voluntary on the part of the owner, a distinction is to be made, whether the vessel was in port or on a voyage.

ART. 3209.—When a sale has been made, the vessel being in port, the creditors of the vendor, who enjoy the privilege for some cause anterior to the act of sale, may demand payment and enforce their rights over the ship, until a voyage has been made in the name and at the risk of the purchaser, without any claim interposed by them.

ART. 3210.—But when the ship has made a voyage in the name and at the risk of the purchaser, without any claim on the part of the privileged creditors of the vendor, these privileges are lost and extinct against the ship, if she was in port at the time of sale.

ART. 3211.—On the other hand, if the ship was on a voyage, at the time of the sale, the privilege of the creditor against the purchaser shall only become extinct after the ship shall have returned to the port of departure, and the creditors of the vendor shall have allowed her to depart on another voyage for the account and risk of the purchaser, and shall have made no claim.

ART. 3212.—A ship is considered to have made a voyage, when her departure from one port and arrival at another shall have taken place, or when, without having arrived at another, more than sixty days have elapsed between the departure and return to the same port, or when the ship, having departed on a long voyage, has been out more than sixty days, without any claim on the part of persons pretending a privilege.

3 A. 40.

ART. 3213.—The captain has a privilege for the freight, during fifteen days after the delivery of the merchandise, if they have not passed into third hands. He may even keep the goods, unless the shipper or consignee shall give him security for the payment of the freight.

1 L. 269; 1 R. 556; 2 A. 129.

ART. 3214.—Every consignee or commission agent, who has made advances on goods consigned to him, or placed in his hands to be sold for account of the consignor, has a privilege for the amount of these advances, with interest and charges, on the value of the goods, if they are at his disposal in his stores, or in a public warehouse, or if, before their arrival, he can show, by a bill of lading or letter of advice, that they have been despatched to him.

This privilege extends to the unpaid price of the goods which the consignee or agent shall have thus received and sold.

Stat. 17th February, 1841, p. 21.—That Article three thousand two hundred and fourteen of the Civil Code be so amended that every consignee commission agent or factor shall have privilege preferred to any attaching creditor on the goods consigned to him for any balance due him, whether specially advanced on said goods or not, provided they have been received by him, or an invoice or bill of lading has been received by him previous to the attachment. Provided, that the privilege established by this act shall not have a preference over a privilege pre-existing on the goods aforesaid in behalf of a resident creditor of this State.

Stat. 8th March, 1841, p. 58.—§ 1. The first section of the act to which this is an amendment be so amended that the last proviso contained in the French text of said section do agree with the English text and read in the following manner in both texts, "Provided, that the privilege established by this act shall not have a preference over a privilege pre-existing on the goods aforesaid in behalf of a resident creditor of this State."

§ 2. All laws or parts of laws contrary to this act be, and the same are hereby repealed.

1 L. 363; 2 L. 440; 3 L. 301, 562; 6 L. 393; 12 L. 144, 370, 379; 13 L. 439; 2 R. 342; 2 A. 572; 3 A. 447; See 14 L. 473, 476.

ART. 3215.—In the event of the failure of the consignee or commission agent, the consignor has not only a right to reclaim the goods sent by him, and which remain unsold in the hands of the consignee or agent, if he can prove their identity; but he has also a privilege on the price of such as have been sold, if the price has not been paid by the purchaser, or passed into account current between him and the bankrupt.

6 R. 263.

CHAPTER IV.

OF PRIVILEGES ON IMMOVABLES AND SLAVES.

ART. 3216.—Creditors who have a privilege on immovables and slaves are :

1. The vendor, on the estate or slave by him sold, for the payment of the price, or so much of it as is due, whether it was sold on or without a credit ;

2. Architects and undertakers, bricklayers and other workmen employed in constructing, rebuilding or repairing houses, buildings, or making other works, on such houses, buildings, or works by them constructed, rebuilt or repaired ;

13 L. 8 ; 15 L. 384, 416 ; 2 A. 309 ; See 2743.

3. Those who have supplied the owner with materials for the construction or repair of an edifice or other work, which he has erected or repaired out of these materials, on the edifice or other work constructed or repaired ;

4. Those who have worked by the job, or by employing their slaves in the manner directed by law, or by the regulations of the police, in making or repairing the levees, bridges, ditches, and roads of a proprietor, on the land, the levees, bridges and roads over which have been made or repaired.

2 A. 309 ; 6 A. 139, 173, 212 ; See 5 L. 349 ; 13 L. 9 ; 3 A. 600.

ART. 3217.—The privilege granted to the vendor on the immovable sold by him, extends to the slaves, beasts and agricultural implements attached to the estate, and which made part of the sale.

ART. 3218.—If there are several successive sales, on which the price is due wholly or in part, the first vendor is preferred to the second, the second to the third, and so throughout.

CHAPTER V.

OF PRIVILEGES WHICH EMBRACE BOTH MOVABLES AND IMMOVABLES.

ART. 3219.—The privileges which extend alike to movables and immovables, are the following :

1. Funeral charges ;

2. Judicial charges ;

17 L. 207.

3. Expenses of the last illness ;

4. The wages of servants ;

5. The salaries of secretaries, clerks and other agents of that kind.

With regard to the wife's dower, she has no privilege on the immovable property of her husband, but a mere right of mortgage, as is said under the title of *contract of marriage*.

3 A. 423 ; 2 A. 759.

ART. 3220.—When, for want of movables, the creditors, who have a privilege according to the preceding article, demand to be paid out of

the proceeds of the immovables and slaves of the debtor, the payments must be made in the order laid down in the following chapter.

3 A. 496.

CHAPTER VI.

OF THE ORDER IN WHICH PRIVILEGED CREDITORS ARE TO BE PAID.

ART. 3221.—If the movable property, not subjected to any special privilege, is sufficient to pay the debts which have a general privilege on the movables, those debts are paid in the following order :

Funeral charges are the first paid ;
Law charges, the second ;
Expenses of the last illness, the third ;
The wages of servants, the fourth ;
Supplies of provisions, the fifth ;

3 A. 428 ; 6 R. 35.

The salaries of clerks, secretaries and others of that nature, the sixth ;

And finally, the wife's dower, the seventh.

ART. 3222.—But when part of the movables are subject to special privileges, and the remainder of the movables are not sufficient to discharge the debts having a privilege on the whole mass of movables, or if there be equality between the special privileges, the following rules shall direct the determination.

ART. 3223.—Whatever may be the privilege of the lessor, charges for selling the movables subjected to it are paid before that which is due for the rent, because it is these charges which procure the payment of the rent.

1 R. 445 ; 2 R. 350 ; 4 R. 366 ; 3 A. 704.

ART. 3224.—The case is the same with respect to the funeral expenses of the debtor and his family ; when there is no other source from which they can be paid, they have a preference over the debt for rent or hire, on the price of the movables contained in the house or on the farm.

1 R. 445.

ART. 3225.—But the lessor has a preference on the price of these movables, over all the other privileged debts of the deceased, such as expenses of the last illness, and others which have a general privilege on the movables.

17 L. 443 ; 1 R. 445.

ART. 3226.—With regard to the crops which are subject to the lessor's privilege, the expenses for seed and labor, the wages of overseers and managers are to be paid out of the product of the year, in preference to the lessor's debt.

So also, he who has supplied the farming utensils, and who has not been paid, is paid in preference to the lessor, out of the price of their sale.

6 R. 35, 484 ; 8 A. 276.

ART. 3227.—If among the movables with which the house or farm,

or any other thing subject to the lessor's privilege, is provided, there should be some which were deposited by a third person in the hands of the lessor or farmer, the lessor shall have a preference over the depositary, on the things deposited, for the payment of his rent, if there are no other movables subject to his privilege, or if they are not sufficient; unless it be proved that the lessor knew that the things deposited did not belong to his tenant or farmer.

ART. 3228.—With the exception stated in the foregoing article, the privilege of the depositor on the thing deposited is not preceded by any other privileged debt, even funeral expenses, unless it be that the depositor must contribute to the expense of sealing and making inventory, because this expense is necessary to the preservation of the deposit.

11 R. 4.

ART. 3229.—The privilege of him who has taken care of the property of another, has a preference over that property, for the necessary expenses which he incurred, above all the other claims for expenses, even funeral charges; his privilege yields only to that for the charges on the sale of the thing preserved.

6 A. 362.

ART. 3230.—The privilege of the vendor on movables sold by him, which are still in possession of the vendee, yields to that of the owner of the house or farm which they serve to furnish or supply, for his rents. It yields also to the charges for affixing seals and making inventories, but not to the funeral or other expenses of the debtor.

2 A. 14.

ART. 3231.—The privilege of innkeepers on the effects of travellers deceased in their house, is postponed to funeral and law charges, but is preferred to all the other privileged debts of the deceased.

ART. 3232.—The privilege of carriers, for the cost of transportation and incidental expenses, yields only to the charges which would arise on the sale of the goods.

The case is the same respecting the freight of goods carried on board a ship or other vessel.

ART. 3233.—If the movables of the debtor, by reason of the special privileges affecting them, or for any other cause, are not sufficient to discharge the debts having a privilege on the whole movable property, the balance must be raised on the immovables and slaves of the debtor, as hereafter provided.

3 A. 436.

ART. 3234.—If the movables or slaves of the debtor are subject to the vendor's privilege, or if there be a house or other work subjected to the privilege of the workmen who have constructed or repaired it, or of the individual who furnished the materials, the vendor, workmen and furnishers of materials, shall be paid from the price of the object affected in their favor, in preference to other privileged debts of the debtor, even funeral charges, except the charges for affixing seals, making inventories, and others which may have been necessary to procure the sale of the thing.

2 R. 250, 527; See 13 L. 8.

ART. 3235.—When the vendor of lands finds himself opposed by

workmen seeking payment for a house or other work erected on the land, a separate appraisement is made of the ground and of the house, the vendor is paid to the amount of the appraisement on the land, and the other to the amount of the appraisement of the building.

1 R. 173.

ART. 3236.—With the exception of special privileges, which exist on immovables in favor of the vendor, of workmen and furnishers of materials, as declared above, the debts privileged on the movables and immovables generally, ought to be paid, if the movables are insufficient, out of the product of the immovables and slaves belonging to the debtor, in preference to all other privileged and mortgaged creditors.

The loss which may then result from their payment must be borne by the creditor whose mortgage is least ancient, and so in succession, ascending according to the order of the mortgages, or by *pro rata* contributions where two or more of the mortgages have the same date.

3 A. 436.

ART. 3237.—When the debts privileged on the movables and immovables cannot be paid entirely, either because the movable effects are of small value, or subject to special privileges which claim a preference, or because the movables and immovables together do not suffice, the deficiency must not be borne proportionally among the debtors, but the debts must be paid according to the order established above, and the loss must fall on those which are of inferior dignity.

1 R. 445.

CHAPTER VII.

HOW PRIVILEGES ARE PRESERVED AND RECORDED.

ART. 3238.—The vendor of an immovable or slave only preserves his privilege on the object, when he has caused to be duly recorded, at the office for recording mortgages, his act of sale in the manner directed hereafter, whatever may be the amount due to him on the sale.

2 A. 251, 500; 3 A. 600; 6 A. 162.

ART. 3239.—Architects, contractors, masons and other workmen, those who have supplied the owner with materials for the construction or repair of his buildings or other works, those who have contracted, in the manner provided by the police regulations, to make or put in repair the levees, bridges, canals and roads of a proprietor, preserve their privileges, only in so far as they have recorded with the register of mortgages, the act containing the bargains they have made, or the amount or acknowledgment of what is due to them, in all cases where the amount of the bargain or agreement, or the amount of the account or acknowledgment, exceeds the sum of five hundred dollars.

2 A. 549; 3 A. 193; 4 A. 97; 5 A. 431; See 16 L. 292; See 3332.

ART. 3240.—The privileges, enumerated in the two preceding articles, are valid against third persons from the date of the act if it

has been duly recorded, that is to say, within six days of the date, if the act has been passed in the place where the registry of mortgages is kept, or adding one day more for every two leagues from the place where the act was passed, to that where the register's office is kept.

16 L. 292; See 3332.

ART. 3241.—When the act, on which the privilege is founded, has not been recorded within the time required in the preceding article, it shall have no effect as a privilege, that is to say, it shall confer no preference on the creditor who holds it, over creditors who have acquired a mortgage in the mean time, which they have recorded before it; it shall, however, still avail as a mortgage, and be good against third persons from the time of its being recorded.

16 L. 292; 2 A. 251.

ART. 3242.—Creditors and legatees, who demand a partition of the patrimony of the deceased, in conformity with the provisions contained in the third section of the title of *successions*, preserve their privilege, as against the heirs or representatives of the deceased, on the immovables and slaves of the succession, only by recording the evidences of their claims against the succession, within three months after it is opened.

Before the expiration of this time, no mortgage can be enforced against the property, nor any alienation be made by the heirs or representatives of the deceased, to the injury of the creditors of the succession.

ART. 3243.—The debts which are described in the preceding chapter, and which include both movables and immovables, are not required to be recorded.

6 R. 434; 3 A. 276.

CHAPTER VIII.

OF THE MANNER IN WHICH PRIVILEGES ARE EXTINGUISHED.

ART. 3244.—Privileges become extinct:

1. By the extinction of the thing subject to the privilege;

3 A. 133.

2. By the creditor acquiring the thing subject to it;

3. By the extinction of the debt which gave birth to it;

4. By prescription.

TITLE XXII.

OF MORTGAGES

CHAPTER I.

GENERAL PROVISIONS.

ART. 3245.—Mortgage is a right granted to the creditor over the property of his debtor, for the security of his debt, and gives him the power of having the property seized and sold in default of payment.

8 N. S. 333; 10 L. 244; 5 R. 496; 10 R. 28; See 14 L. 531.

ART. 3246.—Mortgage is a species of pledge, the thing mortgaged being bound for the payment of the debt, or fulfilment of the obligation.

2 A. 163.

ART. 3247.—It resembles the pledge:

1. In that both are granted to the creditor, for the security of his debt;

2. In that both bind the thing subjected to them, and that the same thing cannot be engaged to a second creditor, to the prejudice of the first.

ART. 3248.—Mortgage differs from pledge in this:

1. That mortgage exists only on immovables and slaves, or such other rights as shall be hereafter described; and that the pledge has for its object only movables, corporeal or incorporeal.

2. That, in pledge, the movables and effects subjected to it, are put into the possession of the creditor, or of a third person agreed upon by the parties, while the mortgage only subjects to the rights of the creditor the property on which it is imposed, without its being necessary that he should have actual possession.

2 A. 163.

ART. 3249.—The mortgage is a legal right on the property bound for the discharge of the obligation.

It is in its nature indivisible, and prevails over all the immovables subjected to it, and over each and every portion.

It follows them into whatever hands they pass.

10 L. 244; 15 L. 597; 16 L. 163; 1 R. 225; 5 R. 496; 10 R. 28; 3 A. 144

ART. 3250.—The mortgage only takes place in such instances as are authorized by law.

2 A. 251, 790.

ART. 3251.—The mortgage is accessory to a principal obligation, which it is designed to strengthen, and of which it is to secure the execution.

6 N. S. 636; 4 L. 326; 15 L. 558, 596; 16 L. 254; 19 L. 480; 3 R. 389; 2 A. 473; 3 A. 714.

ART. 3252.—Consequently it is essentially necessary to the existence

of a mortgage, that there shall be a principal debt, to serve as a foundation for it.

Hence it happens, that in all cases where the principal debt is extinguished, the mortgage disappears with it.

Hence also it happens that, when the principal obligation is void, the mortgage is likewise so; this, however, is to be understood with certain restrictions which are established hereafter.

19 L. 478; See 15 L. 596; 4 R. 416.

ART. 3253.—Mortgage is conventional, legal, or judicial.

2 A. 790.

ART. 3254.—Conventional mortgage is that which depends on covenants.

Legal mortgage is that which is created by operation of law.

Judicial mortgage is that which results from judgments,

ART. 3255.—Mortgage, with respect to the manner in which it binds property, is divided into general mortgage and special mortgage.

General mortgage is that which binds all the property, present and future, of the debtor.

Special mortgage is that which binds only certain specified property.

ART. 3256.—The following objects alone are susceptible of mortgage:

1. Immovables subject to alienation, and their accessories considered likewise as immovables;

16 L. 235; 2 A. 790.

2. The usufruct of the same description of property with its accessories, during the time of its duration;

3. Slaves;

4. Ships and other vessels.

7 L. 486, 490; 11 R. 225; See 16 L. 233.

SECTION I.—*Of Conventional Mortgages.*

ART. 3257.—The conventional mortgage is a contract, by which a person binds the whole of his property or a portion of it only, in favor of another, to secure the execution of some engagement, but without divesting himself of the possession.

2 A. 251, 790; 4 A. 65.

ART. 3258.—A mortgage may be stipulated for the fulfilment of any obligation whatever, even for the completion of a deed.

4 L. 248.

ART. 3259.—A mortgage may be given for an obligation which has not yet risen into existence, as when a man grants a mortgage by way of security for indorsements which another promises to make for him.

4 L. 248; 8 L. 276, 531; 16 L. 374; 9 R. 482; 10 R. 883; 2 A. 249, 971.

ART. 3260.—But the right of mortgage, in this case, shall only be realized in so far as the promise shall be carried into effect by the person making it. The fulfilment of the promise, however, shall impart to the mortgage a retrospective effect to the time of the contract.

10 R. 883; 2 A. 971; 5 A. 231.

ART. 3261.—A mortgage may be given for a part only of the principal obligation.

ART. 3262.—It is not necessary that the mortgage should be given by the person contracting the principal obligation; it may be given for the contract of a third person.

1 A. 62.

ART. 3263.—When a person has given a mortgage on his property for the obligation of a third party, it is necessary to inquire whether he only gave the mortgage, or whether he bound himself personally for the fulfilment of the obligation.

1 A. 62.

ART. 3264.—In the former case, that is, if he has only mortgaged his property to secure the fulfilment of an obligation by a third person, no right of action exists against him personally, but merely an action of mortgage against the thing, to have it seized and sold, so that if it perishes, he who mortgaged it, shall be released from every species of obligation.

4 L. 125; 1 A. 62.

ART. 3265.—On the other hand, if the person who has given a mortgage for another, has bound himself personally for the fulfilment of the obligation, independently of the mortgage there shall exist against him a right of personal action, and he shall not be released, even if the thing mortgaged should perish.

1 A. 62.

ART. 3266.—Although the nullity of the principal obligation includes that of mortgage, this is to be understood, with respect to a person giving a mortgage for another, only in so far as the principal obligation is rescinded by an absolute nullity; for if the principal debtor has only obtained a rescission by a plea merely personal, such as minority or coverture, the mortgage given for him by a third person is not less valid, and shall have its full and entire effect.

ART. 3267.—Conventional mortgages can only be agreed to by those who have the power of alienating the property which they subject to them.

ART. 3268.—Such as only have a right, that is suspended by a condition and may be extinguished in certain cases, can only agree to a mortgage, subject to the same conditions, and liable to the same extinction.

See 12 R. 450.

ART. 3269.—The property of minors, of persons under interdiction, of absentees and corporations, cannot be mortgaged by contract, in any other form and manner than that directed by law.

ART. 3270.—An attorney can only hypothecate the property of his principal, so far as he has a special power for that purpose.

Nevertheless, if the attorney, on effecting a loan for his principal, had granted a mortgage, and the latter had received the money for the loan, or if it had been usefully employed for his benefit, the principal would be bound to ratify the mortgage, and might be compelled to execute it.

ART. 3271.—If a person contracting an obligation towards another,

grants a mortgage on property of which he is not then owner, this mortgage shall be valid, if the debtor should ever after acquire the ownership of the property, by whatever right.

ART. 3272.—A conventional mortgage can only be contracted by an act passed in the presence of a notary and two witnesses, or by an act under private signature. No proof can be admitted of a verbal mortgage.

Hypothecations of ships and other vessels, are made according to the laws and usages of commerce.

7 L. 487, 490; See 2 L. 571; 14 L. 535.

ART. 3273.—To render a conventional mortgage valid, it is necessary that the act establishing it shall state precisely the nature and situation of each of the immovables on which the mortgage is granted.

2 A. 469; 5 A. 123.

ART. 3274.—If it be slaves who are mortgaged, their names, sex, and, as nearly as may be, their age and nation, must be mentioned in the act of mortgage, that their persons may be more easily identified.

2 A. 469; 5 A. 123.

ART. 3275.—A debtor may mortgage his whole present property, or only a specific part, but in either case, it ought to be expressly enumerated, as it is said in the two preceding articles.

5 A. 123.

ART. 3276.—Future property can never be the subject of conventional mortgage.

3 R. 513; 4 R. 231.

ART. 3277.—To render a conventional mortgage valid, it is necessary that the exact sum, for which it is given, shall be declared in the act.

9 R. 432; 2 A. 249, 790; 3 A. 112.

ART. 3278.—The conventional mortgage, when once established on an immovable, includes all the improvements which it may afterwards receive.

3 A. 600; See 14 L. 531.

SECTION II.—Of *Legal Mortgages*.

ART. 3279.—The law alone, in certain cases, gives to the creditor a mortgage on the property of his debtor, without its being requisite that the parties should stipulate it: this is called legal mortgage.

It is called also tacit mortgage, because it is established by the law without the aid of any agreement.

ART. 3280.—No legal mortgage shall exist, except in the cases determined by the present code.

6 L. 293; 13 L. 73; 8 R. 151; 4 A. 465; See 2 L. 92, 112.

ART. 3281.—The rights and credits on which legal mortgage is founded, are those enumerated in the following articles.

ART. 3282.—Minors, persons interdicted and absentees, have a legal mortgage on the property of their tutors and curators, as a security for

their administration, from the day of their appointment, until the liquidation and settlement of their final account.

And the tutors and curators of such persons have a like mortgage on their property, as a security for the advances which they may have made.

11 L. 413; 3 A. 53; 6 A. 413.

ART. 3283.—There is a legal mortgage on the property of persons, who, without having been appointed tutors and curators of minors, interdicted or absent persons, interfere in the administration of their property, reckoning from the day on which the first act of interference was done.

5 L. 355; 11 L. 409; 13 L. 2; 2 R. 445; 2 A. 855.

ART. 3284.—The children of a previous marriage, where the mother has married again, without convoking an assembly of the family, to determine whether or not they shall remain under her tutelage, have a legal mortgage on the property of the last husband, for the acts of the tutorship thus unlawfully kept by the mother, reckoning from the day on which the new marriage took place.

13 L. 243.

ART. 3285.—When either of the parents of a minor shall cause to be adjudicated to him the property which he possessed in common with the minor, the property thus adjudged remains tacitly and specially mortgaged in the minor's favor, for the payment of the price of adjudication and interest, reckoning from the day on which it was adjudged.

13 L. 243.

ART. 3286.—There is a legal mortgage, reckoning from the closing of the inventory, on the property of the surviving husband or wife, or heirs, who have been invested by the inventory with the care of the property of the community, or succession, until they are relieved from their care, or a partition has been made.

ART. 3287.—The wife has a legal mortgage on the property of her husband in the following cases :

1. For the restitution of her dowry, and for reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage ;

2. For the restitution or reinvestment of dotal property, which came to her after the marriage, either by succession or donation, from the day the succession was opened, or the donation perfected.

11 L. 23; See 2 L. 543; 4 L. 556, 559; 16 L. 272; 4 R. 453; 10 R. 79.

ART. 3288.—The creditor who has a legal mortgage, except in the case where certain specific property is subjected to it, may exercise his right on all the immovables and slaves belonging to his debtor, and on such as may subsequently belong to him.

See 2 L. 92.

SECTION III.—Of Judicial Mortgages.

ART. 3289.—The judicial mortgage is that resulting from judgments, whether these be rendered on contested cases or by default, whether they be final or provisional, in favor of the person obtaining them.

5 A. 225.

ART. 3290.—The judicial mortgage takes effect from the day on which the judgment is pronounced, if it has been recorded in the manner hereafter directed.

ART. 3291.—If there be an appeal from the judgment, and it is confirmed, the mortgage relates back to the day when the judgment was rendered.

ART. 3292.—When on the appeal the judgment has only been reversed in part, the mortgage still exists for that part which has not been altered or revised.

ART. 3293.—The awards of arbitrators give rise to a mortgage, only from the day of their homologation.

ART. 3294.—A mortgage results from judgments rendered in other States of the Union or in foreign countries, only in so far as their execution has been ordered by a tribunal of this State, in the manner prescribed by the law.

5 A. 225.

ART. 3295.—Judgments obtained against a person deceased, only bear a mortgage on the personal property of the heir, from the day on which execution shall have issued against the heirs by virtue of such judgments.

ART. 3296.—The judicial mortgage may be enforced against all the immovables and slaves which the debtor actually owns, or may subsequently acquire.

6 A. 397.

SECTION IV.—*Of the Rank in which Mortgages stand with respect to each other.*

ART. 3297.—Among creditors, the mortgage, whether conventional, legal or judicial, has force only from the time of recording it, in the manner hereafter directed, except in the cases mentioned below.

2 A. 774; See 11 R. 171.

ART. 3298.—A mortgage exists without being recorded, in favor of minors, interdicted and absent persons, on the property of their tutors, curators, and others over whose property the law grants them a tacit mortgage, either general or special.

The mortgage of the wife on the property of her husband for her dotal rights, does also exist without being recorded.

10 L. 300; 2 A. 774; 4 A. 227

ART. 3299.—The tutors and curators of minors, interdicted and absent persons, as well as husbands, are bound to render public the legal mortgages with which their property is burdened, and for this purpose, to require that the acts, on which these mortgages are founded, shall be recorded without delay, in the office provided for that purpose.

ART. 3300.—Husbands and tutors, who have neglected to cause to be made the recording directed in the preceding article, and shall have granted or allowed to be taken any privilege or mortgage on their immovables and slaves, without expressly declaring that their property

was subjected to the legal mortgage of their wives, or of the persons above mentioned whose property they are administering, shall be considered guilty of fraud, and shall pay to the party suffering by it such damages as the nature of the case may require.

ART. 3301.—The subrogated tutors and curators for the causes of minors, shall be bound personally, and under the penalty of damages, to see that the records are made, without delay, of the mortgages incurred by the tutors and curators of those minors, for the fidelity of their administration.

ART. 3302.—To prove that mortgages exist on the property of a tutor or curator of a minor, interdicted or absent person, it shall suffice to record in the office of mortgages a certificate from the judge who appointed such tutor or curator, declaring the fact of appointment and the amount of the appraisement, by the inventory, of the property confided to his administration.

1 A. 219.

ART. 3303.—To give publicity to the legal mortgages which wives have over their husbands' property, for the dower which shall be allotted to them, the husband shall record at the office of mortgages :

1. The contract of marriage, or any other act which may serve to show the sums of money, or other property which the wife may have brought by way of dower, at the time of marriage ;

2. The receipts, or other acts serving to show the amount of money or other property which came to the wife on the same account, and which he has during the marriage received, whether this property arose from donations made, or inheritances fallen to the wife.

ART. 3304.—In case of neglect on the part of husbands, tutors, subrogated tutors and curators, in causing to be made the recording ordained by the preceding articles, it may be demanded by the relations of the husband, or of the wife, and by the relations of the minor, interdicted or absent persons, or in default of relations, by their friends.

It may even be demanded by minors and married women, without any need, on the part of the latter, of authority from husbands or judges.

ART. 3305.—When, by the marriage contract, the parties, being of age, shall agree that the recording shall exist only on one or more immovables belonging to the husband, the immovables and other property not included shall remain free and released from mortgage for the wife's dower ; but it cannot be stipulated that no recording shall be made.

11 L. 23.

ART. 3306.—The case shall be the same with respect to the immovable property of the tutor or curator of the minor, interdicted or absent person, when the judge shall have authorized them, in the manner prescribed by law, to hypothecate a specific portion of their property by way of security for their administration, as it is provided in the title of *minors, their tutorship, curatorship, &c.*

ART. 3307.—In the cases specified in the two preceding articles, the husband, tutor, curator, subrogated tutor and curator *ad lites*, need

only demand that the inscription on record shall be made for the immovables specially mortgaged.

ART. 3308.—If the mortgage has not been restricted at the time of appointing the tutor or curator, and if it be notorious that it exceeds the amount in which it is necessary for him to give security, it shall, at his request, be restricted to certain immovables which he shall point out, provided they are thought sufficient to afford a complete guaranty.

1 L. 343; 14 L. 478, 484.

ART. 3309.—This request shall be made as in opposition to the subrogated tutor, or the curator *ad lites* of a minor, or against a curator *ad hoc* appointed by the court for an interdicted or absent person, and the judge shall receive the special mortgage offered, if he thinks it sufficient, and with the advice of the family meeting, in the case of a minor or person under interdiction.

14 L. 478, 484.

ART. 3310.—The husband also, with the consent of his wife, if she be of age, may demand that the general mortgage on all his immovables and slaves, on account of the dower and other claims enjoying the same right, shall be restricted to the immovables which he shall indicate, and which he shall offer to mortgage specially for the preservation of his wife's rights.

See 11 L. 27.

ART. 3311.—The judge, to whom this demand is made, may authorize the husband to give this special mortgage, if he thinks it sufficient, with the assent of five of the nearest relations of the wife, assembled in family meeting.

See 11 L. 27

ART. 3312.—If the wife be a minor, the judge may still grant the authority, provided it be with the assent of a family meeting, composed as in the preceding article, and of a curator *ad hoc* appointed to the wife.

See 11 L. 27.

ART. 3313.—In all cases where the judge restricts the mortgage to certain immovables, the records or inscriptions made on the other property, shall be erased.

CHAPTER II.

OF INSCRIPTION OF MORTGAGES.

SECTION I.—Of the Mode and Effect of Recording Mortgages.

ART. 3314.—Conventional mortgage is acquired only by consent of the parties; and judicial and legal mortgages, only by the effect of a judgment, or by operation of law.

6 L. 147; 11 R. 4; 2 A. 100, 776; 4 A. 227; 5 A. 225.

But these mortgages are only allowed to prejudice third persons,

when they have been publicly inscribed on records kept for that purpose and in the manner hereafter directed.

6 L. 398; 12 L. 104; 4 A. 227.

ART. 3315.—By the words *third persons* used in the foregoing article, are to be understood all persons who are not parties to the act or to the judgment on which the mortgage is founded, and who have dealt with the debtor either in ignorance or before the existence of this right.

6 L. 145; 1 A. 219; 2 A. 100, 776; See 5320.

ART. 3316.—Consequently, neither the contracting parties nor their heirs, nor those who were witnesses to the act by which the mortgage was stipulated, can take advantage of the non-inscription of the mortgage.

1 A. 219; 2 A. 776.

ART. 3317.—All mortgages, whether conventional, legal or judicial, are required to be recorded in the manner hereafter provided.

6 L. 148; 11 R. 171.

ART. 3318.—The inscription of mortgages only binds the property of the debtor, when it has been made, with regard to immovables, in the office of mortgages for the parish where the property lies; and with regard to slaves, in the office of mortgages for the parish where the debtor has his domicile or usual residence.

If the debtor has immovable property lying in more than one parish, the inscription ought to be made in the office of mortgages for each of them.

6 L. 148; 11 R. 20; 3 A. 478; 6 A. 397.

ART. 3319.—The inscription thus made shall have effect against third persons, from the day on which the act was passed, or the judgment rendered, if the inscription was made within six days, reckoning from the date of the act or of the signing of the judgment, if the office in which it is to be made, is situated in the place where the act was made, or the judgment rendered, or within two leagues distance.

One day is added for every two leagues between the place where the office is situated and the place where the act was passed or the judgment rendered.

Stat. 24th March, 1831, p. 88.—§ 2. The article three thousand three hundred and nineteen, of the Civil Code, be, and the same is hereby repealed.

6 L. 148; 3 A. 478.

ART. 3320.—If, on the other hand, the creditor allows the time to elapse without causing the act or judgment to be recorded, his mortgage shall have effect against third persons dealing in good faith, only from the day when he shall have caused the inscription to be made.

But this inscription he may have made at any time, without having recourse to a court of justice, and on presenting an authentic copy of the act or judgment.

6 L. 147; See 3314, et seq.

ART. 3321.—The creditors, whose inscriptions have been made on the same day, possess a concurrent mortgage, and no distinction is made

between the inscription made in the morning and that made in the evening, even although the recording officer may have noted the difference.

ART. 3322.—Where the mortgage has been given by an act under private signature, as this act bears no certain date, it shall only have effect against third persons from the day of its inscription, unless it was duly recorded with a notary public, on the day on which it was passed.

ART. 3323.—Mortgages given and inscribed within three months previous to the failure of the debtor, shall be declared null, as presumed to be given in fraud of other creditors, unless the person, in whose favor the mortgage was granted, shall prove that he paid, in obtaining it, a real effective value at the moment of the contract.

4 L. 754; 6 L. 145; 11 L. 118; 15 L. 123.

ART. 3324.—The word *fraud* used in the foregoing article, means any unfair preference which the debtor may give to one of his creditors over the others, by selling or mortgaging to him a portion of his property for a debt existing before the contract.

ART. 3325.—The inscription of a judgment, obtained against a debtor within ten days preceding his failure, shall have no effect against the other creditors of the debtor, if it appears, from the time at which the suit was commenced, and the manner in which it was conducted, that the debtor intended to favor the plaintiff, either by consenting that judgment should be rendered against him without the usual delays, or by not making a defence, or by confessing judgment when the cause admitted of contest.

11 L. 121; See 12 R. 141.

ART. 3326.—An inscription made after the failure or on the day preceding it, shall have no effect whatever against other creditors.

9 L. 251; 11 L. 121; 2 A. 799; See 9 L. 184.

ART. 3327.—If a succession, which is administered by a curator or beneficiary heir, is not sufficient to satisfy the creditors, an inscription made by one of them, after it is opened, shall have no effect against the others.

9 L. 354; See 12 R. 243.

ART.—3328.—Every notary, who shall pass an act of sale, mortgage or donation of an immovable or slave, shall be bound to obtain from the office of mortgages of the place where the immovable is situated, or where the seller, debtor, or donor has his domicile, if it be of a slave, a certificate declaring the privileges or mortgages which may be inscribed on the object of the contract, and to mention them in his act, under penalty of damages towards the party who may suffer by his neglect in that respect.

3 R. 400; 2 A. 100.

ART. 3329.—If a person, who has given a mortgage on his property, takes advantage of the neglect to register the mortgage, and engages the same property afterwards to another person, without informing him of the first mortgage, he shall be considered guilty of fraud, and shall be subject to such damages towards the party suffering thereby, as the nature of the case may require.

2 A. 100.

ART. 3330.—To obtain an inscription of a public act or judgment, the creditor, either in person, or by an agent, shall present an authentic copy of the act or judgment to be recorded, to the register of mortgages of the place where the inscription is to be made.

5 A. 225; 6 A. 350.

ART. 3331.—If it be an act under private signature bearing a mortgage, the creditor can only have it registered by presenting an authentic copy of the registry made in the office of a notary public, unless the register be acquainted with the signature of the parties, and shall agree, on his own responsibility, to make the inscription, on the original act being presented to him.

2 A. 251; 5 A. 225.

ART. 3332.—The inscription of acts, on which privileges are founded, when they are subjected to this formality, as also donations, shall be made in the same manner as that of mortgages.

4 A. 471; 6 A. 350.

ART. 3333.—The registry preserves the evidence of mortgages and privileges, during ten years, reckoning from the day of their date: their effect ceases, even against the contracting parties, if the inscriptions have not been renewed before the expiration of this time, in the manner in which they were first made.

But this rule does not obtain with regard to the mortgages to which husbands are subjected for the dower and other claims of wives, and tutors and curators towards minors, interdicted and absent persons, whose estates they administer.

Stat. 28th April, 1853, No. 193.—The reinscription of mortgages required by article 3333 of the Civil Code, shall not apply to mortgages now recorded or which may hereafter be given and recorded, in favor of the Commissioners of the Poydras legacy out of the funds bequeathed by the late Julien Poydras, to the indigent girls of the parishes of West Baton Rouge and Pointe Coupée.

Stat. 11th March, 1842, p. 232.—Article three thousand three hundred and thirty-three of the Civil Code of Louisiana be, and the same is hereby so amended, that the rule requiring the reinscription of mortgages at the expiration of ten years from date of their registry, shall not apply to the mortgages which have been or may be given by the stockholders of the various property banks of this State.

Stat. 27th March, 1843.—Article three thousand three hundred and thirty-three of the Civil Code be so amended that it shall be the duty of the recorder of mortgages, and of judges performing the like duties, to cancel and erase, on the simple application, in writing, to that effect, by the owner, creditor of the owner, or other party interested, all inscriptions of mortgages which have existed, or may exist, on their record for a period exceeding ten years, without a renewal of such inscriptions: Provided, however, that this section shall not apply to mortgages against husbands for the dotal and other claims of their wives, to mortgages against tutors and curators, in favor of minors, in-

terdicted or absent persons, nor to such mortgages in favor of the property banks.

13 L. 238; 11 R. 20; 1 A. 219; 2 A. 100, 520, 768, 776, 799; 4 A. 471; 6 A. 471.

ART. 3334.—It shall be the duty of notaries, and other public officers acting as such, to cause to be recorded without delay all acts creating mortgages, which shall be executed by them, whether such mortgages be conventional or legal.

It shall also be the duty of judges to cause to be recorded all legal mortgages resulting from appointments made by them of tutors or curators of minors, of interdicted persons or absentees; and in default thereof such notaries or judges shall be liable to an action in damages, and even to be removed from office, as the case may be.

1 A. 219.

SECTION II.—*Of the Erasure of Mortgages.*

ART. 3335.—Inscriptions of mortgages and privileges are erased by the consent of the parties interested and having capacity for that purpose; this consent to be evidenced by a release, or by a receipt given on the records of the court rendering the judgment on which the mortgage is founded.

1 A. 219.

ART. 3336.—Inscriptions of mortgages and privileges may be also erased by virtue of a judgment ordering such erasure, in one of the cases hereafter enumerated.

1 A. 219.

ART. 3337.—This erasure shall be made on a presentation of the acts, receipts and judgments which operate a release of the mortgages and privileges to be erased, in the same manner as directed for their inscription.

Stat. 1843, p. 105.—Hereafter the recorders of mortgages for the parishes of Orleans and Jefferson, and the parish judges of the several parishes of this State, *ex officio* recorders of mortgages, be and they are hereby authorized and required to cancel from their records any mortgages for which a release may have been granted by an authentic act, upon the mere presentation of the certificate of the notary public before whom such act was executed, or his successor in office, stating that by said act a release was granted and the erasure allowed; which certificate shall be filed in the office of the recorder of mortgages where such cancelling was asked for.

ART. 3338.—If the release has been given by an act under private signature, the erasure shall only take place on the presentation of an authentic copy of the registry of it, made in the office of a notary public, unless the register be acquainted with the signature of the party who has subscribed the act, and shall agree, on his own responsibility, to make the erasure on the presentation of the original.

ART. 3339.—He who shall have subscribed in favor of another, an act bearing a mortgage or privilege, to secure the payment of a debt or the execution of an obligation, may, on payment of the debt, or performance of the obligation, require of the creditor a release of the mortgage

or privilege, provided he will defray the expense of the act which it may be necessary to prepare for this purpose; and if the creditor refuse to grant this release, the other party shall have an action to compel him to grant it, and he shall be condemned to pay the costs.

ART. 3340.—If the debt, for which a mortgage has been granted, or for which there exists a privilege, is payable at several terms, the debtor may, on the payment of each instalment, require a release from the creditor of the mortgage or privilege, in relation to the instalments thus paid, on the terms prescribed in the foregoing article.

ART. 3341.—But in the case supposed in the preceding article, and in all others where partial releases are given, the mortgage or privilege shall only be finally erased on payment of the last instalment of the debt, to insure which payment the whole property burdened shall always remain bound, until the complete discharge of the debt, together with the interest and costs that may have accrued.

ART. 3342.—If a debtor, who had given a mortgage to his creditor on a certain portion of his property, or who had subscribed in his favor an act importing a privilege, has neglected, on paying the debt, which gave rise to the privilege or mortgage, to obtain the release of it, and if the creditor should afterwards absent himself from the State, leaving behind no representative or attorney, he may obtain a decree for this release from any competent judge of the creditor's last place of residence, by proving to the judge, either by testimony in writing, or by sufficient oral testimony, according to the nature and amount of the debt, that it has been fully discharged.

ART. 3343.—When such a demand shall be made before a judge of the last place of residence of the absent creditor, he shall direct that such creditor be cited by notices in French and English, posted up at the usual places, and shall appoint a person to represent the absent creditor in the case.

ART. 3344.—When a person, who has obtained a judgment on which an appeal lies, has had it recorded, if this judgment is afterwards reversed or confirmed in part only, the party, against whom the inscription had been made, may, on motion before the judge who rendered the judgment, after due notice to the other party, obtain an order for the erasure or reduction of the inscription, as the case may require; and if it be a case for erasure, it shall be made at the expense of the party making the inscription.

ART. 3345.—If a debtor, who has granted a mortgage, or signed an act from which there results a privilege, has given notes payable to order and duly marked, as hereafter directed, each holder of such notes may, on their being paid, raise the mortgage, or release the privilege, to the amount of the note or notes thus paid, of which he was the bearer.

ART. 3346.—Even the drawer of these notes may, if he has paid any of them in bank, or in the holder's hands, obtain from the notary who affixed his mark to them, as hereafter directed, a certificate by which the said notary shall declare that the note or notes were secured by an act importing a mortgage or privilege, which was passed before him, men-

tioning, the date of the act, the name of the contracting parties, and the objects which were subjected to the mortgage or privilege; and the register of mortgages shall, on the presentation of this certificate, raise the mortgages, according to the amount of the notes mentioned in the certificate, either partially, or entirely, as hereafter directed.

ART. 3347.—Every notary, before whom an act shall been made, by which notes to order have been given for the payment of a debt bearing a privilege or mortgage, shall attest each of the notes by putting his name on them, mentioning the date of the act from which the privilege or mortgage is derived, under the penalty of damages.

4 A. 303.

ART. 3348.—The recorder, to whom partial releases shall be presented, resulting from payments made on a debt bearing a privilege or mortgage, shall make mention of these partial releases on the margin of the record of the act by which the privilege or mortgage is secured, but he shall not erase it entirely, until the whole debt, for which it was given, shall have been discharged.

SECTION III.—*Of the Office of Mortgages and of the Duties of Recorders.*

ART. 3349.—There is established in each parish an office for the recording of mortgages, privileges and donations.

ART. 3350.—This office is kept in the parish of Orleans by a particular officer, called the Recorder of Mortgages.

Out of the parish of Orleans, the duties of this recorder are performed by the different parish judges, within the limits of their respective jurisdictions.

ART. 3351.—The recorder of mortgages for the parish of Orleans has his office in the city of New Orleans, and must keep three registers:

The first, to record all acts from which there results a conventional or legal mortgage, or privilege;

The second, to record all judicial mortgages;

And the third, to record all donations which have to undergo that formality.

Stat. 1826, p. 162.—The recorder of mortgages for the parish of Orleans, together with the parish judges or other officers fulfilling the duties of recorders of mortgages in their respective parishes, shall not be bound to keep any other separate register, besides the several registers mentioned in the article three thousand three hundred and fifty-one of the Civil Code now in force in this State, which it is made their duty to keep, than that mentioned in the first paragraph of the article three thousand three hundred and fifty-four of the Civil Code; and that the second paragraph of the said article three thousand three hundred and fifty-four be and is hereby repealed. Provided that it shall be the duty of the said recorder of mortgages for the parish of Orleans, as well as of the several parish judges fulfilling the duties of recorders of mortgages in

their respective parishes, always to keep open to the inspection of every person who may wish to examine the same, during the regular office hours, the three registers mentioned in the article three thousand three hundred and fifty-one of the Civil Code.

2 A. 800; 6 A. 242.

ART. 3352.—These registers shall be numbered at each page, and signed *ne varietur*, on the first and last pages, by the judge of the parish of Orleans.

5 A. 154; 6 A. 242.

ART. 3353.—The parish judges must keep the same number of registers as the recorder of mortgages for the parish of Orleans, and shall number their pages, and have them signed *ne varietur*, on the first and last pages, by the judge of their district, or two justices of the peace for their parish.

2 A. 800; 5 A. 154.

ART. 3354.—Besides the registers above mentioned, the recorder of mortgages, and the judges performing the same duties in the different parishes, shall keep:

1. A separate register, in which they shall set down from day to day, and according to their date, the titles of the different acts transmitted to them to be recorded, for the purpose of establishing with exactness the time of such transmission;

2. A book numbered and signed in the same manner as their registers, in which they shall insert, in regular order, a summary of all the acts which they have recorded.

This book shall be open to the inspection of all persons who may wish to examine it, during the hours the office is kept open, but it cannot be removed.

5 A. 154; See Art. 3351, and amendment.

ART. 3355.—In no case can the recorder of mortgages and the judges fulfilling the same duties, refuse or delay the recording of the acts which are presented to them for that purpose, or the delivery of the certificates which are required of them, as hereafter stated.

2 L. 487; 1 A. 219.

ART. 3356.—These officers shall record on their register the acts which are presented to them, in the order of their date, and without leaving any intervals or blank space between them; and they are bound also to deliver to all persons, who may demand them, a certificate of the mortgages, privileges or donations, which they may have thus recorded; if there be none, their certificate shall declare that fact.

1 L. 482; 2 L. 487; 1 A. 219.

ART. 3357.—The register of mortgages, and the parish judges performing the same duty, are answerable for injury resulting:

1. From omitting to record such acts as are directed to be recorded in their office;

2. From omitting to mention in their certificates one or several acts existing on their registers, unless in this latter case the error proceeds from a want of exactness in the description, which cannot be imputed to them.

1 A. 219.

ART. 3358.—The register of mortgages for the parish of Orleans shall furnish to the governor of the State one or more sureties to the

amount of forty thousand dollars, for the faithful execution of the duties required of him by law, and for the payment of such damages as may be sustained by his failure to discharge such duties.

ART. 3359.—The fees, to which the register of mortgages and the parish judges performing the same duty, are entitled, for recording acts delivered to them and giving certificates, are regulated by special laws.

CHAPTER III.

OF THE EFFECTS OF MORTGAGES AND PRIVILEGES.

SECTION I.—*Of the Effects of Mortgages and Privileges with regard to the Debtor.*

ART. 3360.—The mortgage has the following effects :

1. That the debtor cannot sell, engage or mortgage the same property to other persons, to the prejudice of the mortgage which is already made to another creditor ;

2. That if the mortgaged thing goes out of the debtor's hands, the creditor may claim it in whatever hands it may have passed, in so much that the third possessor of it is obliged, either to pay the debt for which the thing is mortgaged, or to leave it to be sold, that the creditor may be paid out of the proceeds thereof ;

3. That the mortgagee has the benefit of being preferred to the mere chirographic or personal creditors, and even to the other mortgagees who are posterior to him in the date of their mortgage or of its registry.

ART. 3361.—When the things mortgaged are in the debtor's possession, the creditor may, in case of failure of payment, proceed against him in the usual manner, by citing him to obtain judgment against him, if the original title does not amount to confession of judgment, and causing afterwards the thing mortgaged to be seized and sold ; and if the title amounts to a confession of judgment, he may, on his oath that the debt is due, obtain from the judge an order for an immediate seizure of the thing ; but if the thing mortgaged is out of the debtor's possession, but in the hands of a third possessor, he must then proceed against this third possessor by what is called the action of mortgage, as is directed in the following section.

7 N. S. 514 ; 1 R. 295, 407 ; 2 A. 367.

SECTION II.—*Of the Effect of Mortgages against third Possessors, and of the Hypothecary Action.*

ART. 3362.—The creditors who have either a privilege or mortgage on immovable property or on slaves, may pursue their claims on them in whatever hands they may happen to pass, to be paid out of their proceeds according to their rank, provided that their titles have been registered according to law.

ART. 3363.—The third possessor of the immovable property or slaves mortgaged, is bound either to discharge the principal together with all

interest of the debt for which the property was mortgaged, to whatever sum they may amount, or to relinquish the property, without any reservation.

ART. 3364.—In case the third possessor fail to comply with either of these obligations, every mortgage or privileged creditor is entitled to cause the immovable mortgaged or subject to privilege to be sold, if, thirty days after amicable demand of payment from the debtor, the debt has not been discharged.

See 13 L. 313.

ART. 3365.—The creditor who shall institute this action against a third possessor, must make oath, at the foot of his petition, that the debt for which he prays the seizure of the thing on which he has a mortgage or privilege, is really due to him, and that he has demanded payment of it without success, thirty days before he presents his petition.

ART. 3366.—The third possessor, who is not personally liable to the debt, may, notwithstanding, within ten days from his being served with an order of seizure, oppose the sale of the property mortgaged, which is in his possession, if he has good cause to show in support of such opposition, as that the mortgage has not been registered or other plea, or if there is other property mortgaged for the same debt within the possession of the principal debtor or debtors, in which last case the possessor may demand that his property be previously discussed, in the form directed under the title of *suretyship*, and during the discussion the sale of the property mortgaged and in the possession of the third person, shall be suspended.

16 L. 231.

ART. 3367.—The plea of discussion cannot be opposed to the creditors, who have either a privilege or a special mortgage on the property found within the possession of a third person.

10 R. 45.

ART. 3368.—The third person, who wishes to avoid the action of mortgage, may, before or after the order of seizure, declare that he relinquishes the property affected by the mortgage, of which he has possession.

This relinquishment may be made by all third possessors, who are not personally bound for the debt, and who are capable of alienating, and it does not deprive them, before the sale, of the right of retaking the property mortgaged, which was in their possession, on discharging the debt, together with the interest and costs.

16 L. 231.

ART. 3369.—The act of relinquishment shall be executed before a notary public in the presence of two witnesses, and notified to the creditor or creditors who have brought the hypothecary action.

On the petition of the first of the interested persons who sues, a curator is appointed to the property relinquished, and under him the sale of the property is conducted in the manner prescribed by law.

ART. 3370.—The deteriorations, which proceed from the deed or neglect of the third possessor, to the prejudice of the creditors who have a privilege or a mortgage, give rise against the former to an action of

indemnification ; but he can claim for his expenses and improvements only to the amount of the increased value which is the result of the improvement made.

4 L. 242.

ART. 3371.—The fruits or income of the property mortgaged are due by the third possessor, only from the time when the order of seizure was served on him, and in case of the discontinuance of the suit during one year, only from the day when a new order of seizure shall be served on him.

3 A. 600.

ART. 3372.—The servitudes and incorporeal rights that the third possessor held on the property before its possession, are renewed after his relinquishment, or after the sale in execution made upon him. His own creditors, after those who held their titles under the preceding proprietors, exercise their rights of mortgage in their order, on the property relinquished or sold at auction.

ART. 3373.—The third possessor, who has either discharged the mortgage debt, or relinquished the property mortgaged, or suffered it to be sold in execution, has an action of warranty against the principal debtor.

1 R. 862.

CHAPTER IV.

HOW MORTGAGES EXPIRE OR ARE EXTINGUISHED.

ART. 3374.—Mortgages are extinguished :

1. By the extinction of the thing mortgaged ;

4 R. 416.

2. By the creditor acquiring the property of the thing mortgaged ;

3. By the extinction of the mortgagor's right ;

9 L. 10; 4 A. 416; See 12 R. 450.

4. By the extinction of the debt, for which the mortgage was given ;

5. By the creditor renouncing the mortgage ;

6. By prescription.

TITLE XXIII.

OF OCCUPANCY, POSSESSION, AND PRESCRIPTION

CHAPTER I.

OF OCCUPANCY.

ART. 3575.—Occupancy is a mode of acquiring property by which a thing, which belongs to nobody, becomes the property of the person who took possession of it, with the intention of acquiring a right of ownership upon it.

ART. 3376.—It follows from the above definition that occupancy can only be a lawful mode of acquiring property, when the thing in occupancy has no owner; when it is of a nature which admits of its being taken possession of, and retained by the acquirer with the intention of keeping it as his own property.

ART. 3377.—There are five ways of acquiring property by occupancy, to wit:

By hunting;

By fowling;

By fishing;

By invention (finding), that is, by discovering precious stones on the sea-shore, or things abandoned, or a treasure;

By captures from the enemy.

ART. 3378.—Wild beasts, birds and all the animals which are bred in the sea, the air, or upon the earth, do, as soon as they are taken, become instantly by natural law, the property of the captor; for it is agreeable to natural reason that those things, which have no owner, shall become the property of the first occupant.

And it is not material whether they are taken by a man upon his own ground or upon the ground of another. But the proprietor of a tract of land may forbid any person from entering it for the purpose of hunting thereon.

11 L. 400.

Wild beasts are those which enjoy their natural liberty and go wherever they please.

ART. 3379.—Wild beasts and fowls, when taken, are esteemed to be the property of the captor as long as they continue in his possession, but when they have once escaped and recovered their natural liberty, the right of the captor ceases, and they become the property of the first who seizes them; and they are understood to have recovered their natural liberty, if they have run or flown out of sight, and even if they are not out of sight, when it happens that they cannot, without difficulty, be pursued and retaken.

ART. 3380.—Peacocks and pigeons are considered as wild beasts, though after every flight it is their custom to return; and with regard

to these animals which go and return customarily, the rule to be observed is, that they are understood to be yours as long as they appear to retain the habit of returning; but if this habit ceases, they cease to be yours, and will again become the property of those who take them. And these animals are considered to have lost the habit of returning, when they have ceased to return for a certain time.

ART. 3381.—It is not lawful to kill peacocks and pigeons belonging to another, when they shall be feeding in the fields, unless they should commit depredations; it shall likewise be unlawful to set traps for the purpose of catching them, under the penalty of damages, which shall be recoverable by the owner.

ART. 3382.—Chickens, turkeys, geese, ducks and other domestic animals, shall not be considered as wild beasts, though there are species of these animals which exist in a state of natural liberty.

Therefore, if the geese or fowls of a person should take flight, they are nevertheless reckoned to belong to him, in whatever place they are found, although he shall have lost sight of them, and whoever detains such animals with an intention to make them his, is understood to commit a theft.

ART. 3383.—Those who discover or who may find precious stones, pearls and other things of that kind on the sea-shore or other places where it is lawful to search for and take them, become masters of them.

ART. 3384.—He who finds a thing which is abandoned, that is, which its owner has left with the intention not to keep it any longer, becomes master of it, in the same manner as if it had never belonged to any body.

4 A. 193.

ART. 3385.—If he, who has found a movable thing that was lost, having caused it to be published in newspapers, and having done all that was possible to find out the true owner, cannot learn who he is, he remains master of it till he, who was the proper owner, appears and proves his right; but if it be not claimed within ten years, the thing becomes his property, and he may dispose of it at his will.

If the thing found be a slave, the property is only acquired after such a lapse of time as is necessary to acquire, by prescription and without title, property of that description.

3 A. 339.

ART. 3386.—Although a treasure be not of the number of the things which are lost or relinquished, or which never belonged to any body, yet he who finds it on his own land or on land belonging to nobody, acquires its property; and should treasure be found on the land of another, one-half of it shall belong to the finder, and the other half to the owner of the soil.

A treasure is a thing hidden or buried in the earth, on which no one can prove his property, and which is discovered by chance.

ART. 3387.—We must not reckon in the number of things relinquished, those which one has lost, nor that which is thrown into the sea, in a danger of shipwreck, to save the vessel, nor those which are lost in a shipwreck. For although the owners of these things lose the possession of them, yet they retain the property and the right to recover

them. Thus, those who find things of this kind, cannot make themselves masters of them, but are obliged to restore them to their lawful owners, in the manner provided for by the special laws made on that subject.

4 A. 193.

ART. 3388.—The manner of acquiring the property of captures made from an enemy in time of war, is regulated by the law of nations, and with respect to prizes made at sea, by laws which are general throughout the Union.

CHAPTER II.

OF POSSESSION.

ART. 3389.—Possession is the detention or enjoyment of a thing, which we hold or exercise by ourselves, or by another who keeps or exercises it in our name.

See 6 L. 57.

ART. 3390.—There are two species of possession, natural and civil.
19 L. 254; See 19 L. 251; 5 R. 314; 2 A. 205.

ART. 3391.—Natural possession is that by which a man detains a thing corporeal, as by occupying a house, cultivating ground, or retaining a movable in possession.

19 L. 254; See 3390.

ART. 3392.—Possession is civil, when a person ceases to reside in the house or on the land which he occupied, or to detain the movable which he possessed, but without intending to abandon the possession.

13 L. 294; 19 L. 254; See 3390; See 13 L. 230; See 2452, 2455, 3405, 3406, 3407; 3463, 3417, 3419.

ART. 3393.—Natural possession is also defined to be the corporeal detention of a thing, which we possess as belonging to us, without any title to that possession, or with a title which is void.

ART. 3394.—Civil possession, on the contrary, is defined in this sense, as being the detention of a thing, by virtue of a just title, and under the conviction of possessing as owner.

13 L. 234.

ART. 3395.—Possession applies properly only to corporeal things, movables or immovables.

The possession of incorporeal rights, such as servitudes and other rights of that nature, is only a quasi possession, and is exercised by the species of possession of which these rights are susceptible.

ART. 3396.—One may possess a thing, not only by one's self, but also by other persons.

Thus the proprietor of a house or other tenement possesses by his tenant or by his farmer; the minor by his tutor or curator; and in general, every proprietor, by the persons who hold the thing in his name.

12 R. 141.

ART. 3397.—Seeing the use of the property is to have a thing in

order to enjoy it and to dispose of it, and that it is only by possession that one can exercise this right, possession is therefore naturally linked to the property.

Thus possession implies a right and a fact; the right to enjoy annexed to the right of property, and the fact of the real detention of the thing, that is in the hands of the master or of another for him.

ART. 3398.—Although the possession be naturally linked with the property, yet they may subsist separately from each other; for it may happen that the actual possessor is not the true owner.

12 R. 141.

ART. 3399.—To be able to acquire possession of a property, two distinct things are requisite:

1. The intention of possessing as owner;
2. The corporeal possession of the thing.

1 R. 41.

ART. 3400.—It is not necessary, however, that a person wishing to take possession of an estate, should pass over every part of it; it is sufficient, if he enters on and occupies a part of the land, provided it be with the intention of possessing all that is included within the boundaries.

1 R. 159.

ART. 3401.—One may acquire possession of a thing, not only by himself, but also through others who receive it for him and in his name. But in this case it is necessary that the person receiving the possession, should have had intention of receiving for the other.

12 R. 141.

ART. 3402.—Children and insane persons, being incapable of exercising a will, cannot acquire by themselves the possession of a thing; but they may acquire, through the medium of their tutor or curator, because the will exercised by tutors and curators in making the acquisition for such persons, supplies the defect of will under which they labor.

ART. 3403.—For the same reason, corporations may acquire the possession of a thing, through the agency of those who administer their affairs.

ART. 3404.—Those who possess, not for themselves, but in the name of another, as farmers, depositaries and others who acknowledge an owner, cannot acquire the legal possession, because, at the commencement of their possession, they had not the intention of possessing for themselves, but for another.

ART. 3405.—When a person has once acquired possession of a thing by the corporal detention of it, the intention which he has of possessing, suffices to preserve the possession in him, although he may have ceased to have the thing in actual custody, either himself or by others.

13 L. 225; 16 L. 10; 19 L. 254; See 3392.

ART. 3406.—This intention of retaining possession is always supposed, where a contrary intention does not appear decidedly: so that although a person may have abandoned the cultivation of his estate, he shall not therefore be presumed to have abandoned the possession, but

shall be presumed on the contrary to have the intention of retaining it, and shall retain it in fact.

13 L. 235; 19 L. 254; See 3453.

ART. 3407.—To retain the possession of a thing, when a man once has it, it is not even necessary that he should have such positive intention; a negative intention suffices, that is, it suffices that the positive intention, which he had in acquiring the possession, shall not have been revoked by a contrary intention; for, so long as this revocation does not take place, the possessor is supposed always to retain his first intention, unless a third person has usurped or taken from him the possession, or he has failed to exercise an actual possession for ten years.

13 L. 235; 19 L. 254.

ART. 3408.—To enable one person to obtain possession for another, it is necessary that he should have such intention in making the acquisition; but in preserving the possession for another, it is not necessary that this intention should continue to exist.

Thus, if a farmer who retains an estate in the name of another, should lose the use of reason, although on this account he would be incapable of exercising a will, and consequently could not retain the possession for and in the name of the person who had leased it to him, yet shall the latter retain the possession.

See 6 R. 1.

ART. 3409.—Even if a person, who commenced his possession of an estate for another, should entertain the intention of no longer holding for that other, but for himself, yet shall he still be presumed to hold possession for the person for whom he originally took it.

1 R. 41; 4 A. 172; See 2 L. 452; 6 R. 1.

ART. 3410.—Possession of a thing may be lost either with or without the consent of the possessor.

ART. 3411.—Possession is lost with the consent of the possessor:

1. When he transfers this possession to another with the intention to divest himself of it;

2. When he does some act, which manifests his intention of abandoning possession, as when a man throws into the street furniture, or clothes, of which he no longer chooses to make use.

4 A. 172.

ART. 3412.—A possessor of an estate loses the possession against his consent:

1. When another expels him from it, whether by force in driving him away, or by usurping possession during his absence, and preventing him from re-entering;

2. When the possessor of an estate allows it to be usurped, and held for a year, without, during that time, having done any act of possession, or interfered with the usurper's possession.

1 R. 159; See 2 L. 452.

ART. 3413.—Although possession results frequently from a fact, and

not from right, it nevertheless confers on the possessor certain rights with regard to the thing possessed, some of which are peculiar to the possessor in good faith, and the others are common to all possessors.

ART. 3414.—The possessor in good faith is he who has just reason to believe himself the master of the thing which he possesses, although he may not be in fact, as happens to him who buys a thing which he supposes to belong to the person selling it to him, but which in fact belongs to another.

6 R. 192; See 3452.

ART. 3415.—The possessor in bad faith is he who possesses as master, but who assumes this quality, when he well knows that he has no title to the thing, or that his title is vicious and defective.

5 R. 192; 12 R. 256; 6 A. 357.

ART. 3416.—The rights, which are peculiar to the possessor in good faith, are:

1. The right, which such a possessor has to gather for his benefit the fruits of the thing, until it is claimed by the owner, without being bound to account for them, except from the time of the claim for restitution.

See 1 L. 137.

2. The right which such a possessor has, in case of eviction from the thing reclaimed, to retain it until he is reimbursed the expenses he may have incurred on it.

10 R. 178; 8 N. S. 608; 12 R. 256.

ART. 3417.—Rights, which are common to all possessors in good or bad faith, are:

1. That they are considered provisionally, as owners of the thing which they possess, so long as it is not reclaimed by the true owner, or person entitled to reclaim it, and even after such reclamation, until the right of the person making it is established;

5 L. 38.

2. That every person who has possessed an estate for a year, or enjoys peaceably and without interruption a real right, and is disturbed in it, has an action against the disturber, either to be maintained in his possession, or to be restored to it, in case of eviction, whether by force or otherwise;

13 L. 236; See 12 R. 253, 371; 3 A. 339.

3. That such a possessor may, by prescription, acquire the property of the thing which he thus possesses, after a certain time, which is established by law, according as he has possessed in good or bad faith.

ART. 3418.—The action, which a possessor for one year, has against a person disturbing his possession, to be maintained in it or restored to it, as is said in the preceding article, shall be decided before pronouncing on the question of property, and the real owner shall not be allowed to repel it by endeavoring to prove his right.

3 A. 339.

ART. 3419.—But this, which is called the possessory action, must be commenced by the possessor within a year, reckoning from the time

when he was disturbed; for if he leaves the person evicting him in possession for one year, without complaint, he shall lose his possession, whatever apparent right he may have had to it, and shall be driven to his action for the property.

13 L. 236; 19 L. 256.

CHAPTER III.

OF PRESCRIPTION.

SECTION I.—*General Provisions.*

ART. 3420.—Prescription is a manner of acquiring property, or discharging debts, by the effect of time, and under the conditions regulated by law.

Each of these prescriptions has its special and particular definition.

4 L. 326.

ART. 3421.—The prescription, by which property is acquired, is a right by which a mere possessor acquires the property of a thing which he possesses, by the continuance of his possession during the time fixed by law.

ART. 3422.—The prescription by which debts are released, is a peremptory and perpetual bar to every species of action, real or personal, when the creditor has been silent for a certain time without urging his claim.

4 L. 327.

ART. 3423.—One cannot renounce a prescription not yet acquired, but it is lawful to renounce prescription, when once acquired.

3 L. 199; 1 R. 335; See 3486, 3517.

ART. 3424.—Such renunciation of prescription is either expressed or tacit.

A tacit renunciation results from a fact which gives a presumption of the relinquishment of the right acquired by prescription.

7 L. 268; See 3456.

ART. 3425.—To be capable of renouncing the right of prescription, one must be capable of alienating his property.

ART. 3426.—Courts cannot supply the plea of prescription.

3 L. 199; 6 A. 121.

ART. 3427.—Prescription may be pleaded in every stage of a cause, even on the appeal, but it ought to be pleaded expressly and specially, before the final judgment.

3 L. 199, 501; 12 R. 155; 1 A. 246.

ART. 3428.—But prescription cannot be pleaded in the supreme court, unless the proof of it appear from documents exhibited, or testimony taken in the inferior court.

ART. 3429.—Creditors and every other person who may have an interest in the acquiring of an estate by prescription, have a right to plead it, even in case the person claiming such an estate should renounce such right of prescription.

3 L. 201; 16 L. 169; 1 A. 330; 2 A. 546; See 1 R. 556; 12 R. 243.

ART. 3430.—The time required for prescription is reckoned by days and not by hours; it is only acquired after the last day allowed by law has elapsed.

3 A. 527.

ART. 3431.—In those prescriptions which are acquired by months, the months are reckoned in the order in which they occur in the calendar, from the day when the possession commenced, whatever may be the number of days which each month may contain.

ART. 3432.—In such prescriptions as are acquired in one or more years, the time is reckoned according to the years of the calendar, which have elapsed during the time of possession required by law.

ART. 3433.—There are no other prescriptions than those established by this code.

ART. 3434.—The rules above laid down are common to those by which property is acquired, and those by which debts are released.

12 L. 534.

SECTION II.—*Of the Prescription by which Property is Acquired.*

ART. 3435.—The time necessary to prescribe for property, is different, whether the property be immovable, slaves or movables.

ART. 3436.—The property of immovables and slaves is acquired by a longer or shorter time, according as the possessor has been in good or bad faith, as laid down in the following paragraph.

ART. 3437.—Immovables are prescribed for by ten years, between persons present, and twenty years between absentees, when the possessor has been in good faith, and held by a just title during that time.

Stat. 14th March, 1848, p. 60.—That the laws of prescription now existing, whereby absentees and non-residents of the State are entitled to longer periods than persons present or residents in the State, before prescription can be acquired against them be, and the same are hereby abolished; and hereafter, absentees and non-residents of the State are to stand on the same footing, in relation to the laws of prescription, as persons present or residents of the State; provided that this act shall not apply to any prescription of one year or less.

11 R. 529; See 3435.

ART. 3438.—The same species of property is prescribed for by thirty years without any title on the part of the possessor, or whether he be in good faith or not.

11 R. 529.

ART. 3439.—The property of slaves is prescribed for by half the time requisite for the prescription of immovables.

1 R. 41; 11 R. 529.

ART. 3440.—The property of movables is prescribed for after the lapse of three years.

ART. 3441.—The rules concerning each of these species of prescription form the subject of the three following paragraphs.

§ 1. *Of the Prescription of Ten and Twenty Years.*

ART. 3442.—He who acquires an immovable in good faith and by a just title, prescribes for it in ten years, if the real owner reside in the State, and after twenty years if the owner resides out of the State.

12 R. 552; 3 A. 334; See 3437.

ART. 3443.—If the true proprietor has resided at times in the State, and at other times out of it, to render the prescription complete two years absence must be computed as one year of actual residence, and thus added to the time of residence already elapsed.

ART. 3444.—The property of slaves is acquired in five years, between parties residing in the State, and ten years when any of them reside out of the State, where the possessor has a title and holds in good faith.

4 L. 215; 16 L. 175; 19 L. 362; 11 R. 529; 3 A. 334.

ART. 3445.—To acquire the property of immovables and slaves by the species of prescription which forms the subject of the present paragraph, four conditions must concur :

1. Good faith on the part of the possessor ;
2. A title which shall be legal, and sufficient to transfer the property ;
3. Possession during the time required by law, which possession must be accompanied by the incidents hereafter required ;
4. And finally an object, which may be acquired by prescription.

2 M. 458; 7 M. 406; 10 M. 436; 3 N. S. 458; 4 N. S. 213; 7 N. S. 518; 8 N. S. 279; 5 L. 240; 15 L. 106, 566, 580; 3 R. 220; 4 R. 201; 11 R. 529; 3 A. S.

ART. 3446.—The good faith, spoken of in the preceding article, is defined in the chapter which treats of possession.

1 A. 440.

ART. 3447.—Good faith is always presumed in matters of prescription ; and he who alleges bad faith in the possessor must prove it.

ART. 3448.—It is sufficient if the possession has commenced in good faith ; and if the possession should afterwards be held in bad faith, that shall not prevent the prescription.

3 A. S; See 3445.

ART. 3449.—To be able to acquire by the species of prescription mentioned in this paragraph, a legal and transferable title of ownership is necessary in the possessor : this is what is called in law a just title.

4 L. 112; 15 L. 566; See 3445.

ART. 3450.—By the term *just title*, in cases of prescription, we do not understand that which the possessor may have derived from the real owner, for then no prescription would be necessary, but a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the property.

15 L. 566, 580; 11 R. 529; 3 A. S; See 4 L. 112.

ART. 3451.—And in this case by the phrase *transfer the property*, we understand not such a title, as shall have really transferred the property, but a title which by its nature, would have been sufficient to transfer the property, provided it had been derived from the real owner, such as a sale, exchange, legacy, or donation.

Thus prescription could not be acquired under a title resulting from a lease or loan, because these contracts do not transfer the property.

15 L. 566, 580; 11 R. 529; 12 R. 553, 598.

ART. 3452.—It is necessary besides ;

1. That the title be valid in point of form ; for if the possession commenced by a contract void in that respect, it cannot serve as a foundation for prescription ;

6 R. 190; 11 R. 56; See 3414, 3415.

2. That the title be certain ; thus, every possessor, who cannot fix exactly the commencement of his possession, cannot prescribe ;

3. That the title be proved, for as it is created by deed, it is not presumed, and every man who founds his title on an act, must produce it, or prove the contents if it be lost.

ART. 3453.—To enable one to plead the prescription treated of in this paragraph, it is necessary that the possession be distinguished by the following incidents :

1. That the possessor shall have held the thing in fact and in right, as owner ; when, however, it is only necessary to complete a possession already begun, the civil possession shall suffice, provided it has been preceded by the corporeal possession ;

2. That the possession shall have been continuous and uninterrupted, peaceable, public, and unequivocal ; a clandestine possession would give no right to prescribe ; but he who possesses by virtue of a title, cannot be considered as a clandestine possessor ; for his title leads to the supposition that the possession commenced in good faith, and that is sufficient to enable him to plead prescription.

15 L. 556, 580; 10 L. 10; 19 L. 251; 11 R. 56; 1 A. 440.

ART. 3454.—As to the fact itself of possession, a person is presumed to have possessed as master and proprietor, unless it appears that the possession began in the name of and for another.

ART. 3455.—When a person's possession commenced for another, it is supposed to continue always under the same title, unless there be proof to the contrary.

ART. 3456.—The circumstance of having been in possession by the permission or through the indulgence of another person, gives neither legal possession, nor the right of prescribing.

Thus, those who possess precariously, that is, by having prayed the master to let them have the possession, do not deprive him thereof, but, possessing by his consent, they possess for him.

ART. 3457.—A possession by violence not being legal, does not confer the right of prescribing.

That right only commences when the violence has ceased.

ART. 3458.—The actual possessor, when he proves that he has formerly been in possession, shall be presumed also to have been in possession in the intermediate time.

16 L. 10.

ART. 3459.—The possessor is allowed to make the sum of possession necessary to prescribe, by adding to his own possession that of his author, in whatever manner he may have succeeded him, whether by an universal or particular, a lucrative or an onerous title.

ART. 3460.—By the word *author* in the preceding article, is understood the person from whom another derives his right, whether by an universal title as by succession, or by particular title, as by sale, by donation, or any other title, onerous or gratuitous.

Thus, in every species of prescription, the possession of the heir may be joined to that of the ancestor, and the possession of the buyer to that of the seller.

ART. 3461.—But, to enjoy this advantage, the different possessions must have succeeded each other without interval or interruption.

ART. 3462.—We do not consider as an interval between two possessions, that which takes place between the decease of the testator and the acceptance of the succession by the heir; the possession of the deceased being considered in law as continued in the person of his heir.

ART. 3463.—The last condition required for prescription is that the thing, which is the object of it, be susceptible of alienation, and of which the alienation is not prohibited by law.

ART. 3464.—When a person has a title and possession conformably to it, he is presumed to possess according to the title and to the full extent of its limits.

§ 2.—*Of the Prescription of Thirty Years.*

ART. 3465.—The property of immovables is prescribed for by thirty years, and that of slaves by fifteen years, without any need of title or possession in good faith.

12 M. 635; 15 L. 566, 580; 1 R. 369; 11 R. 529.

ART. 3466.—This prescription runs both against residents of the State and absentees. But the possession, on which it is founded, ought to have the other qualities, which are necessary to the prescription of ten and twenty years, that is to say, it must be continuous and uninterrupted during all that time; it must be public and unequivocal, and under the title of owner.

1 R. 369; 11 R. 529.

ART. 3467.—The possession necessary for this species of prescription, when it has commenced by the corporal possession of the thing, may, if it has not been interrupted, be preserved by external and public signs, announcing the possessor's intention to preserve the possession of the thing, as the keeping up of roads and levees, the payment of taxes and other similar acts.

ART. 3468.—A man may even retain the civil possession of an estate, sufficient to prescribe, so long as there remain on it any vestiges of works erected by him, as for example, the ruins of a house.

See 13 L. 230, 236.

ART. 3469.—How favorable soever prescription may be, it shall be restricted within just limits. Thus, in the prescription of thirty years, which is acquired without title, it extends only to that which has been actually possessed by the person pleading it.

ART. 3470.—Continuous and apparent servitudes are acquired by possession and the enjoyment of the right for thirty years uninterruptedly, even without a title, or good faith.

ART. 3471.—All the rules, established in the preceding paragraph with regard to the prescriptions of ten and twenty years, are applicable to prescriptions of thirty years, except in the provisions contained in the present paragraph, which are contrary to, or incompatible with them.

§ 3.—*Of Prescription of Movables.*

ART. 3472.—If a person has possessed in good faith and by a just title, as proprietor, a movable thing, during three successive years without interruption, he shall acquire the property of it by prescription, unless the thing was stolen or lost.

4 N. S. 288; 11 R. 16; 12 R. 536; 2 A. 976, 997.

ART. 3473.—If, however, the possessor of a thing stolen or lost bought it at public auction, or from a person in the habit of selling such things, the owner of the thing cannot obtain restitution of it, without returning to the purchaser the price it cost him.

11 R. 16; 2 A. 976; See 2 N. S. 390; 2 L. 514; See 3472.

ART. 3474.—This reclamation on the part of the owner, even by reimbursing the price, is not allowed against a person who has purchased stray animals, which have been sold in conformity with the regulations of police, or other movable objects lost or abandoned, which are sold by authority of law, although he has not possessed them during the time required for the prescription of movables.

11 R. 16; See 3472.

ART. 3475.—When the possessor of any movable whatever has possessed it for ten years without interruption, while the owner resided in the State, or twenty years if he resided out of it, he shall acquire the property without being obliged to produce a title, or to prove that he did not act in bad faith.

18 L. 589; 3 A. 339; See Art. 3437, and amendment.

§ 4.—*Of the Causes which prevent the Prescription tending to the Acquisition of Property.*

ART. 3476.—Those who possess for others, and not in their own name, cannot prescribe, whatever may be the time of their possession.

Thus, farmers, tenants, depositaries, usufructuaries, and all those generally who hold by a precarious tenure, and in the name of the proprietor, cannot prescribe on the thing thus held.

1 R. 41.

ART. 3477.—The heirs of the persons holding under the tenures mentioned in the preceding article, cannot prescribe any more than those from whom they hold such things.

ART. 3478.—Notwithstanding what is said in the two preceding articles, precarious possessors and their heirs may prescribe, when the cause of their possession is changed by the act of a third person, as if

a farmer, for example, acquires from another the estate which he rented. For if he refuse afterwards to pay the rent, if he declare to the lessor that he will no longer hold the estate under him, but that he chooses to enjoy it as his own, this will be a change of possession by an external act, which shall suffice to give a beginning to the prescription.

ART. 3479.—Those to whom tenants, depositaries and such other persons having only a precarious possession, have conveyed the same by a title capable of transferring property, may prescribe for the same.

ART. 3480.—One cannot prescribe against his own title, in this sense, that he cannot change by his own act the nature and the origin of his possession.

Thus, he whose possession is founded on a contract of lease which is adduced, is considered as always possessing by the same title, and cannot prescribe by any length of time.

12 R. 210 ; 1 A. 320.

ART. 3481.—The rule contained in the preceding articles, is to be understood in this sense, that a man cannot prescribe against an essential part of the contract.

Thus the creditor on an annuity cannot prescribe against the right of redemption ; but one may prescribe beyond his title.

So also a person, who has a title for one-half an estate, may prescribe for the other half ; for it may be that a new title has transferred the property to him, or that he has acquired it without title by thirty years possession.

§ 5.—Of the Causes which interrupt Prescription.

ART. 3482.—There are two modes of interrupting prescription, that is, by a natural interruption, or by a legal interruption.

See 3 L. 274 ; 12 L. 530 ; 17 L. 213 ; 6 R. 142.

ART. 3483.—A natural interruption is said to take place, when the possessor is deprived of the possession of the thing during more than a year, either by the ancient proprietor, or even by a third person.

ART. 3484.—A legal interruption takes place, when the possessor has been cited to appear before a court of justice, on account either of the property or of the possession ; and the prescription is interrupted by such demand, whether the suit has been brought before a court of competent jurisdiction or not.

3 L. 274 ; 4 L. 417 ; 12 L. 530 ; 17 L. 216, 219 ; 1 R. 393 ; 11 R. 249.

ART. 3485.—If the plaintiff in this case, after having made his demand, abandons or discontinues it, the interruption shall be considered as having never happened.

4 L. 418 ; 11 R. 249 ; See 2 N. S. 582 ; 3 N. S. 177 ; 3 L. 30, 202, 274.

ART. 3486.—Prescription ceases likewise to run, whenever the debtor or possessor makes acknowledgment of the right of the person whose title they prescribed.

3 L. 262 ; 10 L. 568 ; 12 L. 456 ; 1 R. 556 ; 9 R. 26 ; 11 R. 249 ; 1 A. 325, 330 ; 2 A. 314, 642 ; 3 A. 323, 552 · See 3 L. 199 ; 8 L. 233 ; 12 L. 455 ; 5 R. 473 · 6 R. 419 ; 8 R. 145 ; 9 R. 18, 113 ; 4 A. 509.

§ 6.—*Of the Causes which Suspend the course of Prescription.*

ART. 3487.—Prescription runs against all persons, unless they are included in some exception established by law.

12 R. 507; 3 A. 714.

ART. 3488.—Minors and persons under interdiction cannot be prescribed against, except in the cases provided by law.

15 L. 578, 587; 1 R. 369; 12 R. 253; See 3 A. 714.

ART. 3489.—Husbands and wives cannot prescribe against each other.

ART. 3490.—Immovables and slaves given in dower, and not declared alienable by the marriage contract, are imprescriptible during marriage. They may be prescribed for, if there be a separation of property by the marriage contract, or if it be pronounced afterwards.

2 L. 366.

ART. 3491.—Prescription is equally suspended during marriage:

1. When the wife can only be entitled to an action, after having chosen between accepting or renouncing the community;

2. When the husband, having sold an hereditary estate of his wife, without her consent, is bound in warranty for the validity of such sale; and in every case when the action of the wife may be prejudicial to her husband.

2 A. 466, 756, 834.

ART. 3492.—Prescription does not run against a beneficiary heir, with respect to the debt due him by the estate.

But it runs against a vacant estate, though no curator has been appointed to such estate.

3 L. 199; 9 L. 135; 12 R. 258, 507; 3 A. 714; See 8 L. 321; 9 L. 142; 2 A. 466.

ART. 3493.—It runs likewise during the delay which the law grants for making the inventory and for deliberating.

SECTION III.—*Of the Prescription which operates a Release from Debt.*

ART. 3494.—The prescription, which operates a release from debts, discharges the debtor, by the mere silence of the creditor during the time fixed by law, from all actions, real or personal, which might be brought against him.

3 A. 177.

ART. 3495.—This prescription has also the effect of releasing the owner of an estate from every species of real rights, to which the property may have been subject, if the person in possession of the right has not exercised it during the time required by law.

4 L. 326; 11 L. 256.

ART. 3496.—To enable the debtor to claim the benefit of this prescription, it is not necessary that he should produce any title, or hold in good faith; the neglect of the creditor operates the prescription in this case.

3 A. 177.

ART. 3497.—The time necessary to acquire this prescription, is lon-

ger or shorter, according to the different species of debts or of real rights, of which it produces the discharge or extinction.

ART. 3498.—Besides the different prescriptions of actions, which are mentioned in other parts of this code, there exist others which are the subject of the following paragraphs.

§ 1.—*Of the Prescription of One Year.*

ART. 3499.—The action of justices of the peace and notaries, and persons performing their duties, as well as constables, for the fees and emoluments which are due to them in their official capacity ;

That of masters and instructors in the arts and sciences, for lessons which they give by the month ;

10 L. 204 ; 2 A. 759 ; 5 A. 599.

That of innkeepers and such others, on account of lodging and board which they furnish ;

12 R. 143 ; 3 A. 141, 453.

That of retailers of provisions and liquors ;

Stat. 5th March, 1852, p. 90, § 1.—The accounts of retailers of provisions and liquors, and the accounts of all merchants, whether selling by wholesale or retail, within this State, shall be prescribed by the lapse of three years from the time the articles charged shall have been furnished to the purchaser ; Provided, the above shall not apply to retail vendors of ardent spirits in less quantities than one quart.

4 R. 22.

That of workmen, laborers and servants, for the payment of their wages ;

8 N. S. 492 ; 14 L. 553 ; 11 R. 139 ; See 2 L. 392.

That for the payment of the freight of ships and other vessels, the wages of the officers, sailors, and others of the crew ;

10 R. 402 ; 1 A. 404 ; 3 A. 134 ; See § 505.

That for the supply of wood and other things necessary for the construction, equipment and provisioning of ships and other vessels, are prescribed by one year.

10 R. 402 ; 1 L. 263 ; 10 L. 229 ; 19 L. 412 ; 1 R. 433, 556 ; 12 R. 143 ; 1 A. 404, 405 ; See 5 L. 15
6 L. 594 ; 10 L. 204, 231 ; 1 R. 433 ; 3 R. 335 ; 11 R. 139 ; 5 A. 671 ; See § 437.

ART. 3500.—In the cases mentioned in the preceding article, the prescription takes place, although there may have been a regular continuance of supplies, or of labor or other service.

It only ceases, from the time when there has been an account acknowledged, a note or bond, or a suit instituted.

However, with respect to the wages of officers, sailors and others of the crew of a ship, this prescription runs only from the day when the voyage is completed.

6 L. 594 ; 10 R. 402 ; 3 A. 141, 453.

ART. 3501.—The actions for injurious words, whether verbal or written, and that for damages caused by slaves or animals, or resulting from offences or quasi offences ;

That which a possessor may institute, to have himself maintained or restored to his possession, when he has been disturbed or evicted ;

That for the delivery of merchandise or other effects, shipped on board any kind of vessels ;

That for damage sustained by merchandise on board ships, or which may have happened by ships running foul of each other, are prescribed by one year.

2 N. S. 24; 3 N. S. 535; 3 L. 274, 340; 10 R. 119; 6 R. 382; 2 A. 400.

ART. 3502.—The prescription, mentioned in the preceding article, runs :

With respect to the merchandise injured or not delivered, from the day of the arrival of the vessel, or that on which she ought to have arrived ;

And in the other cases, from that on which the injurious words, disturbance or damage were sustained.

§ 2.—Of the Prescription of Three Years.

ART. 3503.—The action for arrearages of rent charge, annuities and alimony, or of the hire of movables or immovables ;

11 R. 139; 1 A. 209; 2 A. 876; See 6 L. 359.

That for the payment of money lent ;

For the salaries of overseers, clerks, secretaries, and of teachers of the sciences, for lessons by the year or quarter ;

8 N. S. 492; 4 L. 14; 14 L. 553; 11 R. 139; 6 A. 759; See 2 L. 382.

That of physicians, surgeons and apothecaries, for visits, operations and medicines ;

6 R. 456; 3 A. 458.

That of parish judges, sheriffs, clerks and attorneys, for their fees and emoluments,

2 N. S. 515; 6 N. S. 248; 3 A. 458; 5 A. 603; See 2 A. 877.

Are prescribed by three years, unless there be an account acknowledged, a note or bond given, or an action commenced before that time.

ART. 3504.—The action of parties against their attorneys for the return of papers delivered to them for the interest of their suits, is prescribed also by three years, reckoning from the day when judgment was rendered in the suit, or from the revocation of the powers of the attorneys.

2 A. 876.

§ 3.—Of the Prescription of Five Years.

ART. 3505.—Actions on bills of exchange, notes payable to order or bearer, except bank notes, those on all effects negotiable or transferable by indorsement or delivery, are prescribed by five years, reckoning from the day when these engagements were payable.

9 L. 233; 11 L. 143; 15 L. 145; 16 L. 103, 257; 1 R. 182; 12 R. 143; 1 A. 342; 2 A. 634, 970; 3 A. 220, 838, 464, 508, 714; 4 A. 126, 171; 5 A. 219, 220, 276, 147; 6 A. 109, 224, 232, 431; See 1 A. 342; 2 A. 634, 916.

Stat. 5th March, 1852, p. 90.—§ 3. All promissory notes, whether the same be negotiable or otherwise, shall be prescribed by five years.

ART. 3506.—The prescription, mentioned in the preceding article,

and those prescribed above in the first and second paragraphs run against minors and interdicted persons, reserving, however, to them their recourse against their tutors or curators.

They run also against persons residing out of the State.

15 L. 146; 3 A. 220, 503; 6 A. 232.

ART. 3507.—The action of nullity or rescission of contracts, testaments or other acts;

That for the reduction of excessive donations;

That for the rescission of partitions and guaranty of the portions,

Are prescribed by five years, when the person entitled to exercise them is in the State, and ten years if he be out of it.

This prescription only commences against minors after their majority.

4 L. 259, 293; 3 R. 313; 11 R. 302; 2 A. 443, 667; 3 A. 323; 6 A. 104; See 2213, 2474.

§ 4. — *Of the Prescription of Ten Years.*

ART. 3508.—In general, all personal actions, except those above enumerated, are prescribed by ten years, if the creditor be present, and by twenty years, if he be absent.

Stat. 5th March, 1852, p. 90.—§ 2. The prescription of all other open accounts, the prescription of which is ten years under existing laws, shall be prescribed by three years.

6 L. 674; 11 L. 148, 563; 7 R. 387; 12 R. 141, 148, 402; 2 A. 634, 779; 3 A. 46, 177, 220, 323; 4 A. 169, 171; 6 A. 451; See 3437 and amendment.

ART. 3509.—The action against an undertaker or architect, for defect of construction of buildings of brick or stone, is prescribed by ten years.

ART. 3510.—If a master suffer a slave to enjoy his liberty for ten years, during his residence in the State, or for twenty years while out of it, he shall lose all right of action to recover possession of the slave, unless the slave be a runaway or fugitive.

1 A. 195.

ART. 3511.—The rights of usufruct, use and habitation, and servitudes, are lost by non-use for ten years, if the person, having a right to enjoy them, be in the State, and by twenty years if he be absent.

Stat. 30th April, 1853. No. 274. An Act relative to the Prescription of Judgments.—§ 1. Hereafter all judgments for money, whether rendered within or without the State, shall be prescribed by the lapse of ten years from the rendition of such judgment; Provided, however, that any party interested in any judgment may have the same revived at any time before it is prescribed, by having a citation issued according to law, to the defendant or his representative, from the court which rendered the judgment; and if he be absent, the court may appoint a curator *ad hoc* to represent him in the proceedings, upon whom the citation shall be served, unless the defendant or his representative shows good cause why the judgment should not be revived.

§ 2. Any judgment revived as provided in the first section of this act, shall continue in full force for ten years from the date of the order of court reviving the same, and that any judgment may be revived as herein provided for, as often as the party or parties interested may desire.

§ 3. In case any party or parties against whom any judgment for money has been obtained out of the State of Louisiana, and such party or parties have resided in this State for ten years since the rendition of said judgment, that such judgment shall be prescribed, unless suit be instituted on the same within one year from the promulgation of this act; and that all laws or parts of laws contrary to the provisions of this act, be, and the same are hereby repealed.

§ 5.—*Of the Prescription of Thirty Years.*

ART. 3512.—All actions for immovable property, or for an entire estate, as a succession, are prescribed by thirty years, whether the parties be present or absent from the State.

See Art. 3437 and amendment.

ART. 3513.—Actions for the revendication of slaves are prescribed by fifteen years, in the same manner as in the preceding article.

3 A. 339.

§ 6.—*Of the Rules relative to the Prescription operating a Discharge from Debts.*

ART. 3514.—In cases of prescription releasing debts, one may prescribe against a title created by himself, that is, against an obligation which he has contracted.

ART. 3515.—Good faith not being required on the part of the person pleading this prescription, the creditor cannot compel him or his heirs to swear whether the debt has or has not been paid, but can only blame himself for not having taken his measures within the time directed by law; and it may be that the debtor may not be able to take any positive oath on the subject.

ART. 3516.—The prescription releasing debts is interrupted by all such causes as interrupt the prescription, by which property is acquired, and which have been explained in the first section of this chapter.

It is also interrupted by the causes explained in the following articles.

3 L. 262; 10 L. 569; 12 R. 243; 1 A. 325; See 4 L. 216; See 3482.

ART. 3517.—A citation served upon one joint debtor, or his acknowledgment of the debt, interrupts the prescription with regard to all the others and even their heirs.

3 L. 199; 10 L. 570; 12 R. 183, 243; 3 A. 323; See 2505, 3423, 3486.

A citation served on one of the heirs of a joint debtor, or the acknowledgment of such heir does not interrupt the prescription, with regard to the other heirs, even if the debt was by mortgage, if the obligation be not indivisible.

12 R. 183; 1 A. 325; 2 A. 332; 3 A. 262; 5 A. 219; See 2092, 3486.

This citation or acknowledgment does not interrupt the prescription, with regard to the other co-debtors, except for that portion for which such heir is bound.

2 A. 890, 970.

To interrupt this prescription for the whole, with regard to the other

co debtors, it is necessary, either that the citations be served on all, or the acknowledgment be made by all the heirs.

ART. 3518.—A citation served on the principal debtor, or his acknowledgment, interrupts the prescription on the part of the surety.

3 L. 262; 10 L. 570; See 2092, 3517.

ART. 3519.—Prescription does not run against minors and persons under interdiction, except in the cases specified above.

6 A. 104, 109.

ART. 3520.—Prescription runs against the wife, even although she be not separated of property by marriage contract or by authority of law, for all such credits as she brought in marriage to her husband, or for whatever has been promised to her in dower; but the husband continues responsible to her.

GENERAL DISPOSITION.

ART. 3521.—From and after the promulgation of this code, the Spanish, Roman and French laws, which were in force in this State, when Louisiana was ceded to the United States, and the acts of the Legislative Council, of the legislature of the Territory of Orleans, and of the Legislature of the State of Louisiana, be and are hereby repealed in every case, for which it has been especially provided in this code, and that they shall not be invoked as laws, even under the pretence that their provisions are not contrary or repugnant to those of this code.

13 L. 193; 19 L. 590.

TITLE XXIV.

OF THE SIGNIFICATION OF SUNDRY TERMS OF LAW EMPLOYED IN THIS CODE.

ART. 3522.—Whenever the terms of law, employed in this code, have not been particularly defined therein, they shall be understood as follows :

1. The masculine gender comprehends the two sexes, wherever the provision is not one, which is evidently made for one of them only;

Thus, the word *man* or *men* includes women: the word *son* or *sons* includes daughters; the words *he*, *his*, and such like, are applicable to both males and females.

2. The singular is often employed to designate several persons or things: the *heir*, for example, means the heirs, where there are more than one.

3. *Absentee* is the person who has resided in the State, and has departed without leaving any one to represent him.

It means also the person, who never was domiciliated in the State, and resides abroad.

In matters of succession, the heir, whose residence is not known, is deemed an absentee.

15 L. 85; 1 A. 264.

4. By *Advertisements*, in cases where they are required by law to be given, it is understood that the advertisements are not only to be posted up in the usual places, but published in the newspapers, where such are printed.

5. *Assigns*, means those to whom rights have been transmitted by particular title, such as sale, donation, legacy, transfer or cession.

4 A. 262.

6. *Bulk*, is said of that which is neither counted, weighed, nor measured. A sale by the bulk is the sale of a quantity such as it is, without measuring, counting, or weighing.

7. *Fortuitous event*, is that which happens by a cause which we can not resist.

8. *Certain, uncertain*. In matter of obligations, a thing is certain, when its essence, quality, and quantity, are sufficiently described, such as one hundred dollars, such a house, or such a horse.

It is uncertain, when the description is not that of an individual object, but designates only the kind, such as some corn, some wine, a horse.

9. *Thing adjudged*, is said of that which has been decided by a final judgment, from which there can be no appeal, either because the appeal did not lie, or because the time fixed by law for appealing is elapsed, or because it has been confirmed on the appeal.

1 A. 92.

10. *Contribution* is said of the partition by which the creditors of an insolvent debtor divide among themselves the proceeds of his property, proportionably to the amount of their respective credits.

11. *Obligee or creditor*, is the person in favor of whom some obligation is contracted, whether such obligation be to pay a sum of money, or to do, or not to do something.

12. *Obligor or debtor*, is the person who has engaged to perform some obligation.

13. *Discretion*. When it is said that something is left to the discretion of the judge, it signifies that he ought to decide according to the rules of equity and the nature of circumstances.

14. *Children*. Under that name are comprehended, not only the children of the first degree, but the grandchildren, great-grandchildren, and all other descendants in the direct line.

Natural children, even though recognized, make no part of the children properly so called, unless they have been legitimated.

15. *Failure* signifies the situation of a debtor, who finds himself in the impossibility of paying his debts.

16. *Family*, in a limited sense, signifies the father, mother, and children. In a more extensive sense, it comprehends all the individuals who live under the authority of another, and includes not only the servants, but also the slaves of the father of a family.

It is also employed to signify all the relations who descend from a common root.

17. *Fault*. There are in law three degrees of faults: the gross, the slight, and the very slight fault.

The gross fault is that which proceeds from inexcusable negligence or ignorance: it is considered as nearly equal to fraud.

The slight fault is that want of care, which a prudent man usually takes of his business.

The very slight fault is that which is excusable, and for which no responsibility is incurred.

18. *Sons, daughters.* These words, though generally applicable only to the children of the first degree, are sometimes used to signify all the descendants in the direct line.

19. *Force* means the effect of a power which cannot be resisted.

Superior force. Those accidents are said to be caused by superior force, which human prudence can neither foresee nor prevent.

20. *Judge.* The word judge, as employed in this code, means always the competent judge. It is also used to signify the court, whether it be composed of the judge alone, or of the judge and jury.

21. *Inofficious.* Those dispositions, which fathers and mothers and other ascendants make of their property to the prejudice of their descendants beyond the proportion reserved to them by law, are called inofficious.

11 R. 302.

22. *Litigious rights* are those which cannot be exercised without undergoing a lawsuit.

12 L. 124; 2 A. 487.

23. *Notification, notice,* is the information given in writing of some act done, or the interpellation by which some act is required to be done.

9 R. 207; 3 A. 222.

24. *Onerous.* The title is said to be onerous, when it is acquired for a certain price, or under certain charges. It is the contrary of the lucrative title.

25. *Person* is applicable to men and women, or either.

26. *Posterity* comprehends all the descendants in the direct line.

27. *Precarious.* That possession is called precarious, which one enjoys by the leave of another, and during his pleasure.

The title, which excludes the ownership, such as a lease, is also called *precarious*.

28. *Solvency* is the ability to pay one's debts. He who cannot pay all that he owes, is not solvent.

29. *Successor* is, generally speaking, the person who takes the place of another.

There are in law two sorts of successors; the successor by universal title, such as the heir, the universal legatee and the legatee by universal title; and the successor by particular title, such as the buyer, donee or legatee of particular things, the transferee.

The universal successor represents the person of the deceased, and succeeds to all his rights and charges.

The particular successor succeeds only to the rights appertaining to the thing which is sold, ceded or bequeathed to him.

30. *Tacit* is said of that which, although not expressed, is understood from the nature of the thing, or from the provision of the law.

31. *Such as*, are words employed to give some example of a rule, and are never exclusive of other cases which that rule is made to embrace.

32. *Third persons*, with respect to a contract or judgment, are all who were not parties to it. In cases of failure, third persons are particularly the creditors of the debtor, who contracted with him without knowledge of the rights which he had transferred to another.

2 L. 122; 6 L. 539.

THE END

PROMULGATION OF THE CIVIL CODE.

Extract from an Act passed by the Sixth Legislature, of the State of Louisiana, in their Second Session, entitled "An Act to provide for the printing and the promulgation of the Amendments made to the Civil Code of the State of Louisiana." Approved April 12th, 1824.

SECTION I.—*Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened ; That the amendments made to the Civil Code of the State shall be in force from the day of their promulgation, as hereinafter provided.*

SEC. II.—*And be it further enacted, That the said Code as amended, shall be printed in the English and French languages, opposite to one another, under the title of "Civil Code of the State of Louisiana."*

SEC. VII.—*And be it further enacted, That when the said Civil Code shall be printed and received, the promulgation of it shall be made by the Secretary of State, by sending a copy thereof to each of the courts of and within this State, of which transmission the date shall be recorded in the office of the Secretary of State ; and one month after said transmission, the said Code shall be deemed promulgated, and shall henceforward be in full force throughout the State.*

A. B. ROMAN,
Speaker of the House of Representatives.

H. S. THIBODAUX,
President of the Senate.

APPROVED, APRIL 12, 1824.

TH. B. ROBERTSON,
Governor of the State of Louisiana.

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18th Dec 1881

Dear Sir,

I have the pleasure

to inform you

Hon.

Re. M. Miller

6th

Representative

District

N.C.

La







